

**NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION
REVIEW COMMITTEE MEETING**

THURSDAY, MAY 10, 2012

VOLUME 2

**NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION
REVIEW COMMITTEE MEETING**

8:30 a.m.

Thursday, May 10, 2012

La Fonda on the Plaza

Ballroom

Santa Fe, New Mexico

COMMITTEE MEMBERS PRESENT:

Ms. Rosita Worl

Ms. Sonya Atalay

Mr. Alexander Barker

Ms. LindaLee Kuuleilani Farm

Mr. Eric Hemenway

Mr. Adrian John

Mr. Mervin Wright, Jr.

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CALL TO ORDER

ROSITA WORL: Good morning. We will go ahead and call the Review Committee meeting to order, and if I may, I'd like to call upon Armand Minthorn to say the invocation. Generally, we like to get individuals who are – when we're in someone's homeland, we try to get someone from that community. But I think the community will forgive me if we invite our former Chair of the Review Committee to do the invocation. So Armand, please, if you would.

INVOCATION – ARMAND MINTHORN

ARMAND MINTHORN: (Native American language.)

This morning, as we gather here, it's with our heart that we open up with prayer and song. And it's true what our Old People say, when these songs are sung there is that light that will shine. We ask today that this light shine into our hearts. And it is true, this land that we live on, it's the same land that we all look to. It's the same land that has given life to our people when this world was created. And today, as we open here with prayer and song, we ask that we be guided with the teachings from our Old People, we be guided on how to live our life.

1 So today, as we open here, asking that each
2 one of you pray how you've been taught so that we
3 can be with one heart and one mind, because all of
4 us are going in the same direction. My aunt said
5 one time it's not easy to get to Heaven, that's why
6 we have to have something in our heart every day so
7 that we can be guided with our thoughts and our
8 words. So today, as we open here, we can give
9 thanks for our life. We can give thanks for our
10 family and our friends. But most of all, we can
11 give thanks that we can pray with one another. So
12 now we'll sing one song here this morning.

13 (Native American song.)

14 Thank you.

15 ROSITA WORL: *Gunalchéesh*, Armand. (Native
16 American language.) Thank you, Noble People of the
17 Land, for bringing that very special gift to us. I
18 know that in our country we are required to offer
19 balance whenever we receive a gift like that, so
20 may my comments be offered as balance to your words
21 in bringing the voices of our ancestors to this
22 land.

23 NAGPRA is a very great law for Native
24 Americans for it recognizes, I think, for the first
25 time and gives validity to our religious beliefs,

1 to our oral traditions, and equates it on the same
2 level as science. So we are grateful for these
3 opportunities where we can get together with our
4 colleagues, with individuals with whom we work, in
5 museums and in Federal agencies. So I just, again,
6 want to thank the noble people of the land, and let
7 us proceed with our session, unless we have any
8 comments that – any balance comments that our
9 Review Committee members would like to make.

10 Thank you very much.

11 **REVIEW OF AGENDA**

12 ROSITA WORL: We have a very full agenda today,
13 and I think we'll have some new additions. Right
14 after the action items, if the Review Committee
15 concurs, we will discuss a letter from the Review
16 Committee to the Secretary of the Interior. We'll
17 add that after the action items, just before public
18 comments. And then Sherry, I think, has some
19 additions.

20 SHERRY HUTT: Yes, Madam Chair. This morning
21 the first action item has to do with consultation
22 with the Review Committee and Review Committee
23 comment on regulations amending 43 C.F.R. Part 10.
24 Those are the NAGPRA regs. We also wanted to make
25 sure we had enough time should 43 C.F.R. 10.7 be

1 published. The 10.7 rule was a reserved section in
2 1995, and it has not yet been published. That
3 would give guidance to Federal agencies for
4 unclaimed on Federal lands, and it's currently at
5 OMB. That's — I don't know if folks recognize, but
6 before anything goes into the *Federal Register*,
7 going through OMB, those are the really bright
8 folks who check through everything on behalf of the
9 White House, and they give very close review to
10 things. So it's there before being published.
11 We'll talk later about what we do if it's published
12 shortly.

13 But because we only have one reg to go through
14 this morning, and it may go quickly, we have an
15 addition. David Gadsby, from the National Park
16 Service, is here to consult with you on 36 C.F.R.
17 79.12. That's the — 36 is the Park Service
18 regulation, 79 is the — Part 79 is the code, the
19 operational piece for the Archeological Resources
20 Protection Act. They are proposing a rule to do a
21 deaccession of certain items from collections, and
22 he would like to make a presentation and receive
23 your comments.

24 So what I suggest, Madam Chairman, is that if
25 we can slot David Gadsby in this first action item

1 section that deals with regulations. If we do not
2 have enough time, David is willing and generous
3 enough to come back after lunch and come into the
4 agenda after lunch. So I propose that amendment to
5 the – addition to the agenda.

6 ROSITA WORL: Okay. We have two additions
7 proposed to the agenda. What's the wish of the
8 committee?

9 **REVIEW COMMITTEE MOTION**

10 SONYA ATALAY: I move that we accept the
11 additions.

12 ROSITA WORL: We have a motion to amend the
13 agenda.

14 ALEXANDER BARKER: Second.

15 ROSITA WORL: There is a second. Any further
16 discussion on the amended agenda?

17 If not, all in favor of adopting the amended
18 agenda signify by saying aye.

19 SONYA ATALAY: Aye.

20 ALEXANDER BARKER: Aye.

21 LINDALEE FARM: Aye.

22 ERIC HEMENWAY: Aye.

23 ADRIAN JOHN: Aye.

24 ROSITA WORL: Aye.

25 MERVIN WRIGHT, JR.: Aye.

1 ROSITA WORL: Those opposed same sign.

2 The amended agenda is adopted, and let's go
3 ahead and proceed with our first action item, and
4 Madam DFO, if you would give us the context of this
5 action item.

6 **ACTION ITEM: REVIEW COMMITTEE COMMENT ON THE**
7 **PROPOSED RULE CONCERNING PROCEDURES FOR THE**
8 **DISPOSITION OF UNCLAIMED HUMAN REMAINS AND CULTURAL**
9 **ITEMS DISCOVERED ON FEDERAL LANDS AFTER NOVEMBER**
10 **16, 1990, TO BE CODIFIED AT 43 C.F.R. 10.7, AND**
11 **MINOR AMENDMENTS TO 43 C.F.R. PART 10**

12 SHERRY HUTT: Certainly. When we last talked
13 to you all about the regulations in general, there
14 was input that we received from the Review
15 Committee, from the public, from tribes, museums,
16 the Justice Department had input, anyone who had
17 problem with the regulations in any way gave us
18 input. And as a consequence, the counsel and
19 myself and members of the National NAGPRA Program,
20 counsel who represent the leadership at the
21 Department of the Interior, we literally went
22 through the regulations, cognizant of all the input
23 that we received and made note in the regs where
24 change was needed.

25 And, you know, you've heard me say that this

1 is one of the priority items in National NAGPRA
2 yesterday when people were making various
3 presentations. They alluded to some of these
4 problems, definitions and that sort of thing.
5 However, what we have done in what's before you
6 today are not those structural or major changes.
7 There is no new guidance in here. There are no
8 substantive changes being offered today. What we
9 did was we literally plucked out some minor, what
10 we called minor or technical, if you will,
11 amendments to the regulations that we thought we
12 could put forward rather quickly that would be of
13 assistance to people without making real content
14 changes. So we call those the minor amendments,
15 and those have – we separated those out. That's
16 what you have before you today, even though there's
17 some – some of these are so minor I have to look
18 back to my notes to remember what change we made,
19 and – but we still put them forth as proposed rules
20 because we feel that's a better way to do just
21 about anything is to get the input.

22 So if you'll bear with me when I take you
23 through these, that's what we were about today.
24 They were published on May 18. There is – not May
25 18, they were published on – was it May 18? Excuse

1 me, April 18, I knew it was before – all right.
2 April 18, and comment period is open until June 18.
3 So it was good that it was within the Review
4 Committee period that we could get your comment.
5 And then after the comment period closes, they will
6 become final. That's the general process for
7 regulatory rulemaking.

8 We'll receive comments from anyone else who
9 comments, from the public, from organizations,
10 museums, tribes. And then after that, we'll take
11 that into consideration and go final. So that's
12 what I wanted to run through with you today, but I
13 want to make it very clear that this is not the
14 work product of all of your effort and the input
15 that you gave us before. That's still ongoing. I
16 have tasked David Tarler, because of his technical
17 skill, his writing ability, and his just sheer
18 knowledge and intelligence on all of this, to draft
19 that full set. And so when we come to that, that's
20 going to take a substantial period of time to go
21 through.

22 But that won't be before you for a while. It
23 may not even be before you at the next meeting. It
24 may be into '13 that we bring to you – in fact, it
25 would be great if we could bring to you at one of

1 the meetings in '13 a proposed set of sort of
2 recasting or it might even have renumbering and
3 consolidation, what have you. We're looking to
4 simplify the way we talk to the public through
5 regulations. It's part of the Administration's
6 policy of clarity and simplification in regulatory
7 rulemaking. So without further – and so you know
8 that's yet to come.

9 Without further then on that, unless there's
10 any questions on where we are procedurally? If I
11 could just take you through, and some of these are
12 really fairly minor, if you look at –

13 ROSITA WORL: Madam DFO, what I'd like to
14 propose is that we hear – I mean, these are going
15 to be minor amendments, and what I propose is that
16 we hear each proposed amendment and then allow the
17 Review Committee to comment, rather than waiting
18 until the end, if there are no objections.

19 SHERRY HUTT: Fair enough.

20 ROSITA WORL: We'll proceed in that way.

21 SHERRY HUTT: Excellent. All right. The
22 preamble to the regs, by the way, give you a little
23 education on the structure of the National NAGPRA
24 Program. Certain things we report to the Director
25 of the Park Service, like extensions of time in

1 which to comply, and all of the things to which we
2 report to the Assistant Secretary.

3 But the first item that we come to is 10.4 –
4 excuse me, 10.2, Definitions. All right. Yes,
5 Carla is going to summarize 10.2 changes.

6 CARLA MATTIX: The only change in the
7 definitions is really just to clarify the
8 definition of Secretary to reflect the Departmental
9 delegations of the Secretary's authority under
10 NAGPRA, and this resulted from the Secretarial
11 Order in 2005 that changed some of the delegations
12 with – under the NAGPRA Program. So all this does
13 is clarify who is doing what, pursuant to that
14 Secretarial Order.

15 ROSITA WORL: Okay. Do we have any comments on
16 that proposed clarification?

17 Alex, did you have anything?

18 ALEXANDER BARKER: Just to clarify that under
19 the statute there is specific reporting
20 responsibilities and advising responsibilities for
21 the Review Committee. We're still advising the
22 Secretary on those matters, but what happens after
23 that is just going through whoever the Secretary
24 delegates. This is simply clarifying –

25 CARLA MATTIX: Correct.

1 ALEXANDER BARKER: — the method; is that
2 correct?

3 CARLA MATTIX: Correct. The Review Committee's
4 responsibilities are still reflected later on in
5 the regulations. But as you said, what you provide
6 to the Department will be reviewed and taken action
7 upon pursuant to this delegation that's here in the
8 definition section.

9 ROSITA WORL: Mervin.

10 MERVIN WRIGHT, JR.: Yes, thank you. The
11 Secretarial Order 3261, dated May 23, 2005, I had
12 requested from Mr. Tarler and I also included
13 Sherry Hutt on the email request for a copy of that
14 order. I went to the website, the National
15 Program's website and it does have a link to the
16 order, but when you click on it, it's just a press
17 release. And so I think it would be good to have
18 that order posted on the website if that's at all
19 possible.

20 SHERRY HUTT: It was done within about a half
21 hour of your phone call, and I have to say that I
22 appreciate that, because what went up was the press
23 release with the attachment. Instead, we took that
24 down and put up the Secretarial Order itself. And
25 let me just say that that kind of input is much

1 appreciated. There's so much on the website. We
2 receive comments from the public all the time or
3 they catch a typo, and we really appreciate that
4 and we thank you for that. And you did receive
5 your copy fast?

6 MERVIN WRIGHT, JR.: Yes, I did.

7 SHERRY HUTT: Okay.

8 ROSITA WORL: Okay. So there are no comments
9 or proposed amendments or additions to this minor
10 proposed amendment. Let's proceed.

11 SHERRY HUTT: All right. The next is 10.4,
12 Inadvertent Discoveries, and the addition there is
13 that in the original 1995 regulations, the - in
14 priority order, lineal descendant was left out, and
15 so we've inserted lineal descendant. I think
16 that's the sum of the change there, an oversight in
17 the '95 regulations.

18 ROSITA WORL: Any objections? Hearing no
19 objections, go ahead. We will accept that.

20 SHERRY HUTT: And then 10.5, Consultation, is
21 similar; the lineal descendants were not included
22 for the - it read, "the lineal descendants," and it
23 included as to sacred objects and cultural
24 patrimony. Well, lineal descendants don't make
25 claims for cultural patrimony. They are separate

1 only to the tribe. So the correction is to
2 construct the sentence to make it clear that while
3 lineal descendants are included in consultation on
4 human remains, funerary objects and sacred objects,
5 but not objects of cultural patrimony. Would that
6 be – and that's the change there. And it just
7 makes the language consistent with the statute.

8 ROSITA WORL: Any objections to that
9 correction? Go ahead, we have a comment.

10 LINDALEE FARM: Sherry, I guess the way that I
11 read the 10.5 consultation change, there is also a
12 deletion of the sacred objects. Am I reading it
13 incorrectly?

14 SHERRY HUTT: Let's see here. Yes, 10.5 only
15 deals with consultation. Oh, you're quite correct,
16 "Any known lineal descendants...whose remains and
17 associated funerary objects have been or are likely
18 to be excavated..." so it doesn't also indicate
19 sacred objects.

20 LINDALEE FARM: Was that intentional or should
21 we reinsert sacred objects there?

22 SHERRY HUTT: I'm referring to counsel on that.

23 CARLA MATTIX: 10.5 is the part of the
24 regulations that deals with Section 3 of the
25 statute for inadvertent discoveries and intentional

1 excavations. And at least with respect to
2 disposition of cultural items under Section 3,
3 lineal descendants are only able to receive human
4 remains and associated funerary objects. So,
5 consultation with respect to sacred objects or
6 objects of cultural patrimony don't – doesn't
7 extend to lineal descendants. That's why it's not
8 included in the consultation section. Does that
9 answer your question?

10 LINDALEE FARM: Yes, it does. I just wanted to
11 make sure it was intentional since the explanation
12 was that the sacred objects would be left in, so it
13 was just for clarification. Thank you.

14 ROSITA WORL: Good to have an attorney on the
15 committee. Are there any objections to that
16 proposed amendment?

17 If there are no objections, we'll – the Review
18 Committee will concur with that.

19 SHERRY HUTT: The change on 10.6, Custody, the
20 current regulations inadvertently state that
21 cultural relationship would only be to the objects,
22 and the change inserts also reference to cultural
23 relationship with the human remains, so you would
24 have either established under custody. Again, this
25 relates to 3, this also relates to Section 3.

1 ROSITA WORL: Any comments, questions,
2 clarifications? Hearing no comments,
3 clarifications, are there any objections to us
4 approving this, supporting this recommendation?
5 Hearing no objections, the record will reflect the
6 Review Committee concurs.

7 SHERRY HUTT: And counsel correctly points out
8 to me also on 10.6, we removed the requirement that
9 a lineal descendant need to make a claim because
10 they're not required to – under the statute, they
11 don't make a claim as part of the consultation, the
12 disposition goes to them directly, if they so
13 request.

14 ROSITA WORL: Can you restate that?

15 CARLA MATTIX: Under Section 3, human remains
16 and associated funerary objects are essentially
17 automatic – automatically belong to lineal
18 descendants, if those exist. So they don't have to
19 state an affirmative claim. The agency should just
20 find that they belong to the lineal descendant. So
21 we removed that claim requirement in the regulation
22 to be consistent with the statute.

23 ROSITA WORL: So that's a second clarification,
24 so any comments or questions on that? Any
25 objections to that? Hearing no objections, the

1 Review Committee concurs.

2 SHERRY HUTT: Thank you. On 10.8, it's the -
3 the change is even more finite. The term
4 "individuals" appears, and the term "individuals"
5 is replaced with "lineal descendants" to better
6 define what we're talking about.

7 ROSITA WORL: Any objections?

8 ALEXANDER BARKER: Not an objection, but a
9 question.

10 ROSITA WORL: Question.

11 ALEXANDER BARKER: Did I understand that in the
12 previous section you had removed lineal descendants
13 from people who were making claims for sacred
14 objects? I'm not sure I understand the -

15 SHERRY HUTT: They don't need to make a claim,
16 per se, for human remains -

17 ALEXANDER BARKER: No, I'm sorry. In an
18 earlier section you'd been dealing with sacred
19 objects and removing lineal descendants from the
20 people who make claims to them. Here you seem to
21 be inserting lineal descendants into the summaries
22 regarding sacred objects. I'm just asking for
23 clarification.

24 SHERRY HUTT: Difference between Section 3
25 ownership on the land versus collections.

1 ALEXANDER BARKER: (Comment inaudible.)

2 ROSITA WORL: That answers your question?

3 ALEXANDER BARKER: It does.

4 ROSITA WORL: Okay. Any objections? No
5 objections.

6 SHERRY HUTT: We'll move on to 10.10.

7 CARLA MATTIX: Right. And yes, just to
8 clarify, we have moved into the collections side of
9 NAGPRA and the regulations. And the corrections
10 under Section 10.10 are really just to correct the
11 citation to the regulation. The regulation cited
12 for this provision – this is the provision that
13 deals with if an agency or a museum does not have
14 enough information to show cultural affiliation,
15 the tribe can then make its own showing with a
16 preponderance of the evidence, and that's something
17 that's directly from the statute. The provision in
18 the regulation just cited to the wrong section of
19 the statute, so we've corrected that citation
20 instead to say, instead of 7(c), Section 7(c) it
21 now, I think, references the correct section
22 7(a)(4).

23 ROSITA WORL: It was just a technical change.

24 CARLA MATTIX: Yes, that one is very technical.

25 ROSITA WORL: Any questions or clarifications?

1 Okay. Alex.

2 ALEXANDER BARKER: For the Section 10.10
3 revisions, doesn't it also change the – the
4 original regulation said that the Review Committee
5 was responsible for developing recommendations for
6 the disposition of culturally unidentifiable human
7 remains under Section 10.11, and the revision now
8 changes that to have the Review Committee develop
9 recommendations for objects that aren't covered by
10 10.11. Am I misreading it in some way?

11 [Comment inaudible.]

12 ALEXANDER BARKER: That is correct? I ask
13 because concerns have been raised in the past, both
14 here and in formal comments during comment periods,
15 that the Review Committee was not – did not have
16 recommendations for the 10.11 regulations, that
17 over several years the Review Committee developed a
18 set of recommendations which are not what the 10.11
19 regs are based on. The new wording calls for the
20 Review Committee to develop a similar set of
21 recommendations for objects not covered under
22 10.11. Is this process likely to be any different,
23 or are the Review Committee recommendations equally
24 likely to not inform the new regs – the
25 disposition.

1 SHERRY HUTT: One comment you made is that the
2 Review Committee regulation – the Review Committee
3 comments were not interposed into the drafts of
4 10.11. There were many different and sometimes
5 conflicting positions or input of the Review
6 Committee over time, and then the 10.11 rule was
7 consulted upon with the Review Committee during the
8 comment period. So I don't know that we stepped
9 aside from anything that the Review Committee
10 recommended.

11 However, you are quite right that having now
12 Section 10.11 in place, the regulations here are
13 amended. The proposed rule here will clarify two
14 things. One is that the Review Committee is still
15 responsible for recommending a process for
16 disposition of culturally unidentifiable human
17 remains not covered by 43 10.11. So yes, you would
18 recommend on that process, so those would be ones
19 not within aboriginal land where there's no land
20 nexus or not otherwise taken care of under the
21 sections of 10.11. And also disposition requests
22 in the interim, not covered by 10.11 would still
23 come before the Review Committee. So you will
24 still have some disposition requests.

25 ALEXANDER BARKER: And at the risk of sounding

1 peevish, I would just draw a distinction, any
2 citizen of the U.S. – and I'm not even sure it's
3 limited to citizens of the U.S. – can comment
4 during the open comment period.

5 SHERRY HUTT: Absolutely.

6 ALEXANDER BARKER: So the fact that the Review
7 Committee was allowed to comment on the draft regs
8 doesn't really qualify as submitted recommendations
9 to the Secretary for what this policy should be.

10 SHERRY HUTT: Correct, anyone – you're quite
11 correct; anyone can comment on the regs,
12 citizenship aside, anyone. However, during the
13 comment period, it's also incumbent upon us to
14 afford opportunity for the Review Committee to
15 comment.

16 ALEXANDER BARKER: Thank you.

17 SHERRY HUTT: The other change in 10.11 is that
18 it makes it clear –

19 ROSITA WORL: Excuse me. Excuse me.

20 SHERRY HUTT: We're still on 10, I'm sorry.

21 ALEXANDER BARKER: It just references 10.11.

22 SHERRY HUTT: Right. You're quite right.

23 ROSITA WORL: Does that – go ahead, Cissy.

24 LINDALEE FARM: I just would like to make sure
25 that we're going through this systematically,

1 because it seemed as though we were making the
2 technical change with reference to 7(a)(4), and
3 then there was – we didn't have discussions with
4 respect to (c)(2) and then we jumped to (g). And I
5 guess I'd rather just go through this rather
6 systematically, so that we know what we're looking
7 at and what the changes are.

8 SHERRY HUTT: Very fine.

9 LINDALEE FARM: Thank you very much. I
10 appreciate it.

11 ROSITA WORL: Thank you, Cissy.

12 Go ahead.

13 CARLA MATTIX: Well, (c)(2) is the one that we
14 skipped between the two discussions, right, and so
15 there is an amendment to paragraph (c)(2) in 10.10,
16 and that provision is the section of the regs that
17 deals with the exceptions to repatriation. And
18 these are the exceptions such as where there is a –
19 the cultural items are indispensable to the
20 completion of a specific scientific study, where
21 there are competing claims, and where a court has
22 made some determinations. Those are the kind of
23 exceptions that kick in that are reflected in the
24 statute and that we've elaborated on in the
25 regulations.

1 So the amendment that is being proposed in
2 that paragraph applies to provision (c)(2), which
3 is the multiple requests for repatriation. And
4 basically the amendment will – let me see what the
5 amendment does. I think it just – it clarifies
6 that the exception for repatriation applies where
7 there are multiple competing requests for
8 repatriation, and the museum or Federal agency,
9 after complying with the regs, cannot determine by
10 a preponderance of the evidence which competing
11 requesting party is the most appropriate claimant.
12 So I think it just tries to clarify the existing
13 language in that paragraph a little bit more to
14 emphasize those points.

15 ROSITA WORL: Okay. So we now have two
16 proposed amendments on the table.

17 LINDALEE FARM: If I may –

18 ROSITA WORL: Go ahead.

19 LINDALEE FARM: – Madam Chair. I do have a
20 question with one of the amendments to (c)(2).
21 There was a deletion of complying with “these
22 regulations” and an insertion of “this part,” could
23 I ask what was meant by “this part” rather than
24 “these regulations” and why that change?

25 CARLA MATTIX: I think the terminology for

1 "this part" is just to bring it more in compliance
2 with language – regulatory language. "This part"
3 refers to the entire 43 C.F.R. Part 10, so it could
4 apply to anything within the entire regulation.

5 LINDALEE FARM: Okay. So it was meant to be
6 broader rather than narrower.

7 CARLA MATTIX: I believe that's right, and
8 just, I think, to conform to existing regulatory
9 language when referring to an entire regulation
10 covering the subject.

11 LINDALEE FARM: Okay. Thank you very much.

12 ROSITA WORL: So, do we have any comments on
13 10.10 (c)(2)? Any objections to that? No.

14 Okay. Let's proceed, in order.

15 SHERRY HUTT: And then we get to (g), 10.10(g),
16 which is the recommendations to the Secretary of
17 actions for dispositions of human remains not
18 already addressed in 10.11. That was the
19 discussion that we had previously.

20 ROSITA WORL: Okay. Now we'll take action on
21 that. Any further questions or comments on that?
22 Any objections? Okay.

23 SHERRY HUTT: Moving on then to 10.11, the
24 change in 10.11, the edit in 10.11 is 10.11
25 indicates lines of evidence to show aboriginal

1 connection, aboriginal lands. The 10.11 list is
2 different than the 10.6 list that is on the land
3 side, the Section 3 land side. So this regulatory
4 change just clarifies that the list of evidentiary
5 pieces available under 10.11 does not amend 10.6.
6 Does that – let me give this to Stephen.

7 STEPHEN SIMPSON: Okay. If the – under 10.6,
8 which again is the part concerning Section 3,
9 Discoveries on Land, okay, Congress specifically
10 set out that – and it's reflected in the
11 regulations under implementing that section, that
12 aboriginal land would be – would be found by
13 decisions of the Indian Claims Commission or the
14 Court of Claims, U.S. Court of Claims. If the
15 Committee remembers, in 10.11 what we did to try to
16 expand the possibilities for an aboriginal land
17 connection and a cultural connection to remains, we
18 said, okay, we changed or added to that list the
19 possibility that aboriginal land would be – could
20 be found by reference to treaties, Acts of
21 Congress, or Executive Orders. Okay? This change
22 – and we did that in the regulations. So there is
23 a different piece there.

24 Now this change would only – would add to the
25 10.11 provision, okay? That that expansion of the

1 sources for determining aboriginal land only
2 applies to 10.11 and not to the previous provision
3 in the Section 3 regulations where Congress
4 specifically said – set out those sources. So all
5 we're doing is saying for purposes of 10.11, this
6 is where you may – these are the sources you may
7 use. Is that any clearer at all, or have I
8 completely muddled it up?

9 ROSITA WORL: No. Go ahead, Merv.

10 MERVIN WRIGHT, JR.: I would have to disagree
11 with this amendment because what I hear your
12 description is that under – under this amendment,
13 culturally unidentifiable human remains or
14 collections that are culturally unidentifiable,
15 that are classified as culturally unidentifiable,
16 could only be repatriated based on the Indian
17 Claims Commission boundaries, that that's how it
18 would – that's how it would apply.

19 STEPHEN SIMPSON: No, I'm sorry, then I did
20 muddle it up completely. It's actually the
21 reverse. When we promulgated the 10.11 regulation,
22 the culturally unidentifiable regulation, we said
23 specifically that the sources were actually broader
24 than the Indian Claims Commission boundaries.
25 Okay? That in addition to Indian Claims Commission

1 boundaries, aboriginal land could also be found by
2 reference to treaties, Acts of Congress, Executive
3 Orders and other items like that. This is – the
4 only thing this is doing is clarifying that that –
5 that that broadening the change outside to echo
6 outside of the Indian Claims Commission boundaries
7 applies to the culturally unidentifiable
8 regulations, but not to the discoveries on
9 aboriginal land – the discoveries on Indian land
10 regulations, where Congress limited it to Indian
11 Claims Commission. Does that make more sense now?

12 MERVIN WRIGHT, JR.: Yes.

13 ROSITA WORL: Yes.

14 STEPHEN SIMPSON: Okay. Does that answer your
15 concern?

16 ROSITA WORL: Go ahead.

17 MERVIN WRIGHT, JR.: Yes, it does.

18 STEPHEN SIMPSON: Okay. Thank you.

19 SHERRY HUTT: And you're wondering why Congress
20 would have done that?

21 ROSITA WORL: Right. Right.

22 SHERRY HUTT: Because 10.3 is site specific,
23 it's on those lands. Whereas collections being
24 removed from the lands, you have multiple lines of
25 inquiry to assist you, but you have the – you'd

1 have a hundred percent knowledge of where you're at
2 on those lands under 10.3. So other ways of
3 substantiating it are not necessarily necessary.

4 ROSITA WORL: Is that clear to everyone? Do we
5 have any questions, comments or objections?

6 LINDALEE FARM: I just want to make one
7 comment. I think it's extremely clear, and this
8 goes back to my question about this part and this
9 section and the distinction between this part is
10 broader and this section is limiting. So I think
11 you folks have done a nice job about separating
12 those out. Thank you very much.

13 SHERRY HUTT: That's a very good piece to take
14 into consideration as we go through the entire
15 rule, to make it very clear what's Section 3 and
16 what's Section 7, what's the land and what's
17 collections, something to be cognizant of as we go
18 through.

19 The next one on 10.12, Civil Penalties, this
20 is even -

21 ROSITA WORL: Wait, wait. Excuse me.

22 SHERRY HUTT: Oh, I'm sorry.

23 ROSITA WORL: Well, let's just take any action
24 on this one. We - we concur with the changes.
25 There are no objections. We concur.

1 SHERRY HUTT: Thank you. Moving then to 10.12,
2 the changes here are ministerial. The contact
3 person to send your allegations of failure to
4 comply to is the NAGPRA Civil Penalties Coordinator
5 rather than the Director of the Park Service. So
6 throughout this section, you'll see various parts
7 where the NAGPRA Civil Penalties Coordinator is
8 inserted in place of the Secretary. And then
9 there's an address change in (k)(1) to put in the
10 proper address for the Office of Hearings and
11 Appeals. That's an update.

12 Have I missed anything else in 12?

13 CARLA MATTIX: (Comment inaudible.)

14 SHERRY HUTT: Yes, and the hearings – do you
15 want to expand on that, on the hearings procedure?

16 CARLA MATTIX: Yes, later on in 10.12, in the
17 sections that deal with the actual hearings
18 procedures, some change has been made just to
19 clarify the actual process required under the
20 hearings procedure in the Department regulations,
21 so that nothing substantive has changed. It's just
22 the process that is already required by Department
23 of Interior hearing regulations.

24 ROSITA WORL: Sonya, did you have a comment?

25 No.

1 Any objections? So the Review Committee
2 concurs.

3 SHERRY HUTT: Moving then to 10.13, the Future
4 Applicability rule, in that rule we maintain a list
5 of Indian entities recognized and eligible to
6 receive services from the United States Bureau of
7 Indian Affairs, and there is the Indian Tribes List
8 Act, and in the regulation when published a few
9 years ago, we had the incorrect citation to that
10 Act, so this change would put in the correct
11 citation. And you see it up there, 25 U.S.C.
12 479A-1.

13 ROSITA WORL: Any questions, comments,
14 objections? The Review Committee concurs.

15 SHERRY HUTT: And then we move to 10.15.
16 Carla, do you want to take this one?

17 CARLA MATTIX: Yes, this is just a correction
18 to reflect the actual requirements of the
19 Administrative Procedure Act, which is – which is
20 reflected in one of the provisions, paragraph
21 (c)(1), and I think the previous – the current
22 regulations state that administrative remedies
23 relate to Federal agencies and museums under the
24 Administrative Procedures Act, but actually under
25 the Administrative Procedures Act that only applies

1 to Federal agencies. So we've just corrected that
2 to say that it only applies to Federal agencies.

3 ROSITA WORL: Questions, comments, objections?
4 The Review Committee concurs.

5 CARLA MATTIX: I think the only other thing in
6 that section is another citation correction where
7 there was a mix-up on the correct reference for
8 Federal collections versus Federal lands, and just
9 a citation correction there.

10 ROSITA WORL: Technical amendment, uh-huh. Go
11 ahead.

12 SHERRY HUTT: I think that that concludes the
13 presentation on the amendments. Oh, one more – I
14 apologize, one more thing. In the regulations,
15 there was appendices that had documents that were –
16 examples of documents. Instead, what we've done is
17 we've taken that out, and we have – you'll see a
18 series of citations to the website. So on the
19 website, we maintain templates, templates for
20 notices and templates for the various pieces that
21 the public would need to use, museums and Federal
22 agency templates for notices and all. And so
23 instead of having documents up there, we simply
24 have references to the website.

25 ROSITA WORL: It's just a technical

1 clarification. And that's it now?

2 SHERRY HUTT: That would be it.

3 ROSITA WORL: Okay. For the record, the Chair
4 would entertain a motion that the Review Committee
5 accept the proposed rule, the changes to the – the
6 proposed rule.

7 SHERRY HUTT: Thank you.

8 **REVIEW COMMITTEE MOTION**

9 LINDALEE FARM: I would move that the committee
10 accept the changes to the proposed rule.

11 SONYA ATALAY: Second.

12 ROSITA WORL: We have a motion made and
13 seconded. Question has been called for – oh, I'm
14 sorry. Go ahead.

15 MERVIN WRIGHT, JR.: So at this point, as far
16 as the committee's recommendation for approval or
17 that we're taking this action to approve it, so
18 where does this stand with regard to the comments
19 that would be received? Let's say, for example, if
20 the Pyramid Lake Paiute Tribe is going to comment
21 on these, where do those comments stand with regard
22 to the action of this committee?

23 SHERRY HUTT: The action of this committee
24 constitutes a comment. Any other tribe, museum,
25 any individual could still interpose comments. It

1 doesn't preclude others from commenting.

2 ROSITA WORL: Any further comments or
3 questions? Are we ready for the question? All in
4 favor signify by saying aye.

5 SONYA ATALAY: Aye.

6 ALEXANDER BARKER: Aye.

7 LINDALEE FARM: Aye.

8 ERIC HEMENWAY: Aye.

9 ADRIAN JOHN: Aye.

10 ROSITA WORL: Aye.

11 MERVIN WRIGHT, JR.: Aye.

12 ROSITA WORL: Those opposed say no.

13 The Review Committee concurs with the -

14 SHERRY HUTT: Thank you, Madam Chairman, and I
15 might add having this discussion today might help
16 others who would then listen to this or be informed
17 by this discussion to know where we're going with
18 these amendments.

19 ROSITA WORL: Okay. What time do we have?

20 SHERRY HUTT: Madam Chair, if we might move
21 David Gadsby to this afternoon and proceed with the
22 Columbia Plateau Intertribal Council presentation.

23 ROSITA WORL: Right.

24 SHERRY HUTT: I'm trying to protect the time of
25 the 10 o'clock item, because that individual is

1 calling in.

2 ROSITA WORL: All right. We will now move to
3 the Columbia Plateau Inter-Tribal Repatriation
4 Group presentation, and call on the delegates to
5 come forward.

6 SHERRY HUTT: As the delegates are coming
7 forward, let me tell you there has been one change
8 on those who will appear before you. Harvey Moses
9 of the Colville Business Council will not be here
10 today, but Allen Slickpoo, Jr., of the Nez Perce
11 Tribe is here; Armand Minthorn; Rex Buck, Jr., of
12 the Wanapum Band of Priest Rapids, Jackie Cook of
13 Colville, Colville Repatriation Specialist; Angela
14 Neller, Wanapum Heritage Center Curator; Sylvia
15 Peasley of the Colville Business Council.

16 ROSITA WORL: Welcome. We look forward to your
17 presentation.

18 **PRESENTATION: COLUMBIA PLATEAU INTER-TRIBAL**

19 **REPATRIATION GROUP**

20 **PRESENTATION**

21 JACQUELINE COOK: Good morning, and (Native
22 American language). Thank you. As the Colville
23 staff, I extend regrets from Harvey – Harvey Moses
24 and Sylvia Peasley, Council business comes so that
25 they have to stay at home.

1 We would like to thank the Review Committee
2 for this opportunity to provide testimony on our
3 experiences with NAGPRA compliance. This will be a
4 shortened version of the testimony provided in your
5 packets.

6 The Columbia Plateau Inter-Tribal Repatriation
7 Group consists of the tribes and bands from the
8 Columbia Plateau in the Pacific Northwest states of
9 Washington, Idaho, and Oregon. These include the
10 Confederated Tribes of the Colville Reservation,
11 the Confederated Tribes of the Umatilla Indian
12 Reservation, the Confederated Tribes of the Warm
13 Springs Reservation of Oregon, Confederated Tribes
14 and Bands of the Yakama Nation, the Nez Perce
15 Tribe, and the Wanapum Band of Priest Rapids, a
16 non-federally recognized Indian group. It is
17 through our respect for the land, our people, and
18 our family relationships, that we have chosen to
19 work together as descendant communities of the
20 people who have lived on the Columbia Plateau for
21 thousands of years. It is our responsibility to
22 the Creator to come together for our ancestors and
23 to ensure that they are returned to the earth.

24 From 2005 through 2011, we have repatriated a
25 minimum number of 1,144 individuals, 30,299

1 associated funerary objects, and 28,889
2 unassociated funerary objects from 51 institutions
3 under NAGPRA, and the Native American Indian Act,
4 and Washington State's Human Remains laws. In
5 2011, we repatriated a minimum number of 98
6 individuals and 1,702 funerary objects from 6
7 institutions.

8 We presented to you last on July 22, 2011, in
9 Syracuse, at which time we provided testimony on
10 the Culturally Unidentifiable Native American
11 Inventories or CUI Databases. Today, we would like
12 to speak to some issues of concern, specifically
13 the length of time of notice review, repatriation
14 grants, Federal agency compliance, the Ancient One
15 also known as Kennewick Man, and NAGPRA funding –
16 or NAGPRA training, excuse me.

17 With regards to the notice review and
18 publication, we request that National NAGPRA
19 streamline and shorten the timeline – the timeframe
20 for review and publication of Notices of Inventory
21 Completion and Intent to Repatriate in the *Federal*
22 *Register*. At the time we submitted our testimony,
23 we were concerned that National NAGPRA was not able
24 to begin review of submitted notices for six to
25 eight weeks after receipt. Additionally, we have

1 been told that after National NAGPRA review and
2 museum agency approval of edits, it will take an
3 additional 20 to 60 days to publish in the *Federal*
4 *Register*. We do acknowledge the change in
5 staffing, and we understand now over 70 notices
6 have been published since January.

7 With regards to repatriation grants, we
8 request that National NAGPRA review their
9 repatriation grant process, including requesting
10 the availability of funds for repatriation from
11 museum agency is addressed in the application, and
12 what is funded under this program is reconsidered.
13 Concern over the availability of repatriation
14 grants to all the tribes prompted us to look how
15 repatriation grants were being used. We conducted
16 a short survey on the 12 repatriation grants
17 awarded in FY 2011 for a total of \$121,982.01.
18 Eight of the grants went to tribes and the
19 remaining four to museums. Our study looked at
20 cost associated directly with the repatriation
21 actions, administrative costs, matching costs,
22 distances between museum and tribe, the amount to
23 be repatriated, whether repatriated items were
24 shipped or hand-carried, and whether the grant
25 applicant has an FY 2010 or FY 2011

1 documentation/consultation grant.

2 Seventy-one percent or a little over 86,000
3 dollars of the money allocated went to the cost
4 associated directly with repatriation actions.
5 These actions included consultation fees, supplies,
6 material, travel and other direct costs, such as
7 stipends for tribal members, food for ceremonies,
8 and grave preparation. Twenty-nine percent or
9 35,754.94 of money allocated went to administrative
10 costs that included salary and wages, fringe
11 benefits, indirect and other costs, in this case a
12 facility-use fee to write the grant report. Three
13 applicants did not charge administrative costs to
14 the grant. Six applicants had administrative costs
15 that were less than 27 percent of the grant monies
16 received by the applicant. Three applicants had
17 higher administrative costs, at 61.5 percent, 66.3
18 percent, and 81.2 percent. Five applicants
19 indicated match amounts. In all of the cases,
20 these matches were for salary, wages, fringe
21 benefits and indirect.

22 Sherry Hutt has noted over the last three
23 years that there has been a 300 percent increase in
24 repatriation grant requests. Repatriation grants
25 are noncompetitive and are funded on the first-

1 come-first basis from October 1 through June 30th.
2 After June 30th, the remaining money is used for
3 competitive consultation and documentation grants.
4 In FY 2011, there was not enough money to support
5 all recommended consultation and documentation
6 project grants after repatriation funding was
7 allocated.

8 One way National NAGPRA could increase the
9 availability of grant funds would be to limit
10 repatriation grants to those costs associated
11 directly with repatriation costs. For FY 2011,
12 this would have resulted in an additional 35,000-
13 plus of funds available for documentation and
14 consultation grants.

15 With regards to Kennewick Man, we request
16 National – the National NAGPRA Review Committee to
17 report to Congress continued tribal concerns over
18 the Kennewick Man or Ancient One. The descendant
19 claimant tribes continue its vigil for the Ancient
20 One. We have communicated with Magistrate Jelderks
21 and the Corps of Engineers to impose reporting
22 deadlines and peer review upon the plaintiff
23 scientists. To date the Corps has received minimal
24 progress reports and was allowed limited review to
25 draft manuscripts, and this just happened in the

1 last three weeks. We want to be confident all
2 associated records are turned over to the Corps to
3 ensure that they are able to appraise and consider
4 future research requests based upon all available
5 information. The claimant tribes have requested
6 any further studies proposed utilize the data
7 already collected, that scientific access to this
8 collection be restricted due to the culturally
9 offensive practice of studying our ancient remains,
10 the multiple studies completed to date, and the
11 fragile nature of the Ancient One.

12 The Plateau Tribes conduct annual visits to
13 the Ancient One for ceremony, letting him know he
14 is not forgotten, he is our ancestor, and the
15 tribes continue to pursue avenues for his return.
16 In an effort to protect our ancestors, the claimant
17 tribes have begun working with our lobbyists and
18 elected officials to resurrect legislation to
19 change NAGPRA law. We request that the Review
20 Committee recommend to Congress that the NAGPRA
21 legislation be amended to cover this issue and
22 other issues that have risen over the last 20 years
23 of implementation. We hope that any amendments to
24 the law or revisions to the regulations will
25 include ample consultation.

1 With regards to the Federal agency compliance
2 and the Bureau of Indian Affairs, we requested that
3 NAGPRA Review Committee report to Congress about
4 the continued issue of Federal agency compliance.
5 For those of us in Indian Country working with
6 NAGPRA on a daily basis, the July 2010 GAO report
7 was not news, but we were pleasantly surprised and
8 felt vindicated when such a report was published in
9 a timely manner. This report brought to the light
10 of day many of the issues the tribes had been
11 reporting.

12 The GAO team met with the Plateau Policy
13 Program and technical staff and listed – and
14 listened to our concerns. At that time, the
15 members of the Plateau group were focused mainly on
16 assisting the Corps of Engineers meeting their
17 NAGPRA obligations. At the request of tribal
18 policy leaders, we have begun looking at the Bureau
19 of Indian Affairs and how they are now meeting
20 their NAGPRA compliance requirements. The GAO
21 reported that the scope of BIA's compliance
22 responsibility was ambiguous and remains unsettled.

23 In 2011, the BIA reported that – to National
24 NAGPRA their activities and accomplishments to date
25 have repatriated 553 individuals – individual sets

1 of human remains and 12,081 associated funerary
2 objects. And we were pleased to hear the updated
3 report yesterday. We appreciate that additional
4 work and acknowledge it. At the time of this
5 writing, we didn't have that information, of
6 course. There is, however, no indication of the
7 number, scope or locations of NAGPRA collections
8 which remain in the control of the BIA. Such
9 reports, as presented by the BIA in 2011 to
10 National NAGPRA are helpful, necessary, and
11 somewhat encouraging. However, they do not present
12 the full image of compliance.

13 All of us can retrieve the numbers of
14 repatriations completed. A more difficult number
15 to retrieve is how much work is left to do and how
16 are agencies going to accomplish it. The GAO
17 report identified that there is a correlation
18 between levels of efforts and accomplishment of
19 tasks and having established policy, procedures,
20 staff and funding resources. While many agencies
21 have issues with the GAO report, we feel the first
22 step to correcting a problem is admitting that
23 there is a problem. Now that we have accomplished
24 that, we can begin to work together to correct the
25 problem.

1 Congress needs to continually hear and
2 hopefully understand the need for additional monies
3 in order to accomplish the necessary work.

4 Continuing to send that message to the Review
5 Committee's Report to Congress can strengthen and
6 drive home the fact that there is much work left to
7 be done even after 20 years. We would like to see
8 National NAGPRA conduct a study for both museums
9 and Federal agencies to understand the full image
10 of compliance.

11 With regards to national training, we request
12 National NAGPRA continue to support and provide
13 venues for training. Our experience in
14 participating in trainings at the Review Committee
15 meetings, National NAGPRA webinars and through the
16 NPI Program is that there is still a large need for
17 training, including basic NAGPRA training. Changes
18 in staff at both tribes and museums, newly
19 recognized tribes, and tribes who are just
20 beginning to deal with NAGPRA show that there is a
21 strong need even after 20 years. We have witnessed
22 continued misunderstandings of NAGPRA, what it
23 covers, how it works. We also recommend that those
24 trainings occur across the country within regional
25 areas and in a timely manner.

1 And in conclusion, the Columbia Plateau Inter-
2 Tribal Repatriation Group once again thanks the
3 committee for this opportunity to speak about our
4 experiences with NAGPRA compliance. Thank you.

5 ROSITA WORL: Do we have any further comment
6 from other members of your group?

7 REX BUCK, JR.: Good morning. My name is Rex
8 Buck. I'm with the Wanapum of Priest Rapids, and
9 I'd like to thank the committee and all of the
10 people that are here today that we might be able to
11 come and say a few words.

12 I think it's really important that you
13 understand that what we're talking about is very
14 important and very sacred to our people, that where
15 we live, the Wanapum of Priest Rapids, we've never
16 lived anywhere else. Our people have lived in the
17 same place, doing the same thing, for hundreds and
18 thousands of years. We still speak our own
19 language. We still have our own ceremonies, and we
20 still have a responsibility to our land and to the
21 resources of our land and to the ones that left
22 this land for us to take care of.

23 And we're here today supporting what you heard
24 with the repatriation group that we formed, so that
25 we could make things happen and get things done, so

1 that we could hear and understand each other's
2 concerns and issues over moving forward in
3 repatriations, funerary objects and items of –
4 sacred items of patrimony, and, you know, these are
5 all important to us.

6 And today to be mindful of, I know, the
7 agenda, I just want to say that in closing that as
8 we're sitting here, we're listening to one another
9 also to our concerns and our issues in the process
10 that is being presented to us by Congress and by
11 NAGPRA in the interpretations of the laws and the
12 things that take place to make NAGPRA happen, but
13 also to the Review Committee on their support of
14 the concerns and issues that they hear throughout
15 the years and – year and today of the things that
16 are of concern.

17 I would appreciate that the Review Committee
18 and also the National NAGPRA understand and
19 continue to afford opportunity to provide our
20 comments, even though we're not federally
21 recognized. That is the choosing of our people.
22 That is the choosing of our ancestors. We have to
23 stay where we're at, and we'll be there forever.
24 And for our younger people that are here today,
25 this is one thing that was always told to myself

1 was know your language. If you don't know your
2 language, you don't know what is going to be really
3 important for you. Learn your culture and
4 understand the things that you are entrusted with,
5 the resources that you are taking care of for your
6 children, your grandchildren and those yet unborn.
7 A way back there was many resources, today there is
8 not too many. But nevertheless, we're all here
9 together and we all have to work together, and we
10 all have to have a voice and understand each other
11 and open our hearts and minds so that we can make
12 things happen and move forward so that our Great
13 Maker will recognize that and realize that we are
14 still continuing our way. So I appreciate these
15 few minutes and I'm glad to be here amongst each
16 one of you today. Thank you, Ma'am.

17 ROSITA WORL: Thank you.

18 ARMAND MINTHORN: Today it's - it's good to be
19 here. And throughout these years in working with
20 these tribes, my relatives, we've come to know a
21 good experience in learning. And throughout these
22 years, we've had disagreements, but we've always
23 agreed on what eventually we want to do, which is
24 to rebury our ancestors. Because we've gained this
25 experience, we now know how important it is to work

1 with Federal agencies, how important it is to have
2 a relationship with these Federal agencies. And
3 many times we help the Federal agencies, not only
4 in complying with the law but maintaining
5 consultation, but most of all working and
6 maintaining a long-term relationship. Relationship
7 can go a long way with a Federal agency, and the
8 results of that relationship can't be emphasized
9 enough.

10 The tribes continue to work with each other
11 and we all know what's important. Like Rex is
12 saying, we all have received guidance from our old
13 people on how to take care, not only of our
14 ancestors, but to take care of our self. And many
15 of these old people that guided us, disciplined us,
16 corrected us, are gone now. We're still here, and
17 we try our best in echoing their words, following
18 their example, their teachings, and this is how we
19 continue with one another as tribes in going in the
20 same direction.

21 It's been a very big test for us as tribes,
22 but we've been through them, and it has made us
23 stronger in knowing what's important to all of us.
24 There's continued work that still needs to be done
25 in working with culturally unidentifiable human

1 remains, what is termed "culturally
2 unidentifiable," they're Native American, period,
3 end of discussion. And they need to be treated as
4 such, which we all know are sacred.

5 It's going to be a challenge for us as tribes
6 to work with culturally unidentifiable, but this is
7 where relationships are very helpful with Federal
8 agencies. And we're confident that we can work
9 through this with the Federal agencies, but what's
10 important is committees like this. What's
11 important is to interpret the law as it is, and to
12 apply the law as it is. We can't have any room to
13 misinterpret. We can't have any room to have any
14 other interpretation in other than what the law
15 states, and this is where it's helpful that Federal
16 agencies understand this law and how we as tribes
17 can help them with this law. And it's very
18 important too, such as committees as you are, to
19 not only be vigilant on how these Federal agencies
20 act, but how these Federal agencies apply the law
21 as well.

22 The reports that were given here by BLM and
23 BIA, these reports are encouraging, but it's very
24 frustrating for us as tribes, in particular with
25 the Bureau of Indian Affairs. There are only two

1 positions within the BIA. There's only 760,000
2 dollars with the BIA to work with NAGPRA. Because
3 of that, it's going to be a very slow process;
4 results are going to be very minimal. We as tribes
5 have voiced our concern because the Bureau does not
6 know what's in their repositories, they do not know
7 if any of these artifacts and/or human remains are
8 complete or whole. At one point in recollecting
9 the Review Committee meeting in Washington DC, the
10 Bureau indicated then that it would take them 35
11 years to come in complete compliance with NAGPRA.
12 I remember that very distinctly. The BLM said that
13 it would take them 42 years to come in compliance
14 with NAGPRA. That's unacceptable.

15 Here we are 20 years later, and we have these
16 Federal agencies that have no priority within them
17 self to comply with a law that applies to
18 everybody. As an example, there was a meeting in
19 Portland, Oregon, a month ago, the regional office,
20 Bureau of Indian Affairs, and NAGPRA was mentioned.
21 The people in that office said, what is NAGPRA?
22 What is it? That only reflects what the Bureau
23 does not know. The Bureau in the regional office
24 does not have a line item for NAGPRA. They said
25 that. So this is a very clear indication that the

1 Bureau has so much work to do, and how are they
2 going to do it with 760,000 dollars and two
3 positions? I would ask that, and I would ask the
4 Committee to be very vigilant in monitoring what
5 they do and how they do it, and I would demand
6 results from the Bureau and the BLM.

7 This Committee – this Committee's authority
8 has to be very clear. This is why it's important
9 that all of the Committee members support your
10 Chair. This Committee needs to be assertive and
11 aggressive in working with NAGPRA to ensure that
12 museums and universities and Federal agencies
13 comply with the law. The Committee needs to be
14 cognizant of asking the tough questions and being
15 vigilant on results. Results are very important.
16 Complying with the law is very important, and this
17 Committee, this Committee's authority can help with
18 that.

19 And that's why it's important too that this
20 committee not meet twice a year. You need to meet
21 more than that. You need to meet where the tribes
22 are. Tribes are very limited in DC. You need to
23 go where the tribes are. I would suggest that here
24 to the committee today. Being here in Santa Fe is
25 a good thing. There are many tribes here, and this

1 is how relationships can help this committee when
2 people come here like this.

3 But these words here today and again to thank
4 the committee for this time, and I would ask too
5 that in the future as the work progresses and as
6 the results come about, both for the committee, as
7 tribes, and the Federal agencies, museums and
8 universities, we all have to understand the same
9 thing, that what we're working for and working with
10 are sacred. They are very significant to the
11 tribes, and with that kind of understanding it
12 makes it easier to have results. But for us as
13 tribes, you know, when we're gone, this work is
14 going to continue. And what we want is for the
15 people that will follow you and me to understand
16 why this is important and this is where examples
17 come in. Each one of you are setting an example
18 just like we are, and we want these examples to be
19 continued with, so that we can get our ancestral
20 remains back and in the ground where they belong.
21 That's what we want. So these words here today and
22 again to thank the committee for your time and
23 encourage each one of you to continue with the work
24 that you're doing. Thank you.

25 ROSITA WORL: Thank you very much. It is now

1 10 o'clock. I know that the Review Committee will
2 want to have time to review and make
3 recommendations on your report to us. But for now
4 what I'd like to do is ask any of the Review
5 Committee members if they have any questions that
6 they would like to pose at this point in time, but
7 then after – later in the day we will act on your
8 recommendation. We'll discuss your recommendations
9 as to how the Review Committee is going to respond
10 to them. So do we have any questions from the
11 Review Committee that they would like to have
12 answered at this point in time? Any
13 clarifications?

14 ALEXANDER BARKER: Madam Chair.

15 ROSITA WORL: Yes.

16 ALEXANDER BARKER: Rather than asking a
17 question, is there another member who would like to
18 speak?

19 ROSITA WORL: Yes, if – I know we're short in
20 time, but we really want to hear from you, because
21 I know you've traveled a significant distance to be
22 here, at significant cost to the tribe, and so we
23 do want to hear from you, but if you would be
24 mindful, that would be good.

25 ALLEN SLICKPOO, JR.: Yes, I will. Thank you,

1 Madam Chair. Thank you, Review Committee. I am
2 Allen Slickpoo, Jr. (Native American language.)
3 That's my name, (Native American language), of the
4 Nez Perce Tribe. I currently serve on the tribal
5 council in the capacity of the Secretary of the
6 Governing Body, and realizing that through our
7 processes and consultation process, we deal with a
8 lot of people with the EPA and the Bonneville Power
9 and NOAA Fisheries because we are a resource tribe,
10 the Bureau of Reclamation, the BLM, the Forest
11 Service, that I would like to advocate and request
12 the assistance to further expand and possibly take
13 the recommendations that we brought forward today
14 for your consideration that we might be able to –
15 there's a lot of issues in here that as far as
16 funding goes and compliance, there's a lot of
17 tribes, as you can could see, the Plateau Tribes
18 Review Committee is setting the tone for other
19 tribes. Other tribes are now becoming aware of the
20 NAGPRA process and, like Mr. Minthorn stated, that
21 they're not aware of what NAGPRA means, and it is
22 really important to – because the Plateau Tribes
23 have set the tone, look at the many – over almost
24 1,200 individual remains that have been repatriated
25 through the joint effort of all the five tribes,

1 six tribes that comprise of this Plateau tribes
2 committee and all the 30,000-some funerary,
3 associated objects that have been there.

4 We are a natural resource tribe, our tribe.
5 For one, we have MOUs with 11 different forests.
6 That's where we are, because we are so involved
7 with natural resources, with rivers, five different
8 sub-basin rivers that we're - our people sustain
9 their life upon. And so in a modern-day society
10 where the growth, because of the foreclosures and
11 the homes and everything that the economy is so low
12 that a lot of individuals are moving out, they're
13 moving somewhere else. And these multimillionaires
14 are coming in, and they're purchasing property.
15 And they're expanding for economic growth, and
16 inadvertent discoveries are happening from time to
17 time but what can we do. We always tell us - or
18 say that the supreme law of the land that we are an
19 inherent sovereign, that we are equivalent to the
20 Federal Government, yet we have to jump through all
21 these hoops going through this process.

22 So we need the NAGPRA Review Committee's
23 support to help get through that process and the
24 policy, because a lot of projects are being held up
25 because of the inadvertent discoveries, our people

1 are there, because of this economic growth that's
2 happening with these new projects. So I encourage
3 you to take and consider the recommendations that
4 we're bringing forward today, because we – like
5 what was spoken, we're all one heart and one mind
6 and the prophesy of our peoples through oral
7 history tells us that, you know, all the way from
8 South America to the tip of North America that the
9 Creator created one kind of people and one color of
10 skin with a language within our own circles and our
11 own beliefs and sacred ways. So that's what we're
12 all about is what my brothers here have indicated
13 about the spirituality and the sacredness of who we
14 are and what we stand for, and I'd encourage –
15 because a lot of tribes don't have a culture, the
16 oral history is forgotten, and we didn't forget
17 that. We speak our language, and we practice those
18 ancient ways today. So I thank you at this time.
19 (Native American language.)

20 ROSITA WORL: Thank you.

21 **REVIEW COMMITTEE QUESTIONS AND DISCUSSION**

22 ROSITA WORL: We will go ahead and open it up
23 for questions from the Review Committee. Do we
24 have any questions? Sonya.

25 SONYA ATALAY: I just have a – well, a brief

1 comment first, to thank you for your presentation.
2 I found it really helpful to hear about some of the
3 barriers and the concerns that you have, and I
4 really appreciated the research on the grants.
5 That was new information to me, and I really
6 appreciated the way you've done it and presented
7 it. I do have some further questions, but I think
8 I'll save those for later when we discuss it
9 because those aren't for your group. They're more
10 for Sherry and others. Thank you again.

11 JACQUELINE COOK: Thank you.

12 ROSITA WORL: Any questions? Merv.

13 MERVIN WRIGHT, JR.: I guess I too want to
14 thank you for coming here and presenting your
15 concerns. I was taking notes as you - each of you
16 were speaking, and we have your report. And I have
17 a lot of comments, but I'm going to save those.
18 I'm going to yield to the time here, and I think
19 when we discuss it here with regard to the policy
20 requirements you - there was a mention of changing
21 the law, there was a mention of looking at policy
22 to clarify process, and so at this time I would
23 just - I want to let you know that, you know, I
24 took a lot of notes here as your comments, your
25 statements have got me thinking about what we can

1 do to facilitate the program's procedural
2 obligation to assist and support what it is that
3 you are asking. Thank you.

4 JACQUELINE COOK: Thank you.

5 ROSITA WORL: Well, thank you again very much
6 for being here. We want to be responsive, and we
7 will discuss your recommendations in the later
8 afternoon. Thank you very much for being here. We
9 know that you came at great expense to yourself,
10 and I think that's something the committee should
11 also consider, is you know, maybe there are other
12 means, electronic means that we might be able to
13 confer with other tribes who maybe don't have the
14 resources to be here. So we really do appreciate
15 your comments and recommendations. *Gunalchéesh*.

16 JACQUELINE COOK: Thank you.

17 ALLEN SLICKPOO, JR.: Thank you.

18 ROSITA WORL: What we'll do now is go ahead and
19 take a very short break, not a half-hour break, ten
20 minutes if we can. And we want to come back and
21 hear from the two other presenters that we have.
22 So ten-minute break.

23 **BREAK**

24 ROSITA WORL: If we could call the Review
25 Committee back to order please, and let us go into

1 our next presentation, the role of NAGPRA – the
2 role of the National Archives and Records
3 Administration, NARA, in preserving and making
4 accessible NAGPRA records.

5 SHERRY HUTT: Madam Chairman, the report that
6 you're about to hear from Jason Lautenbacher, who
7 is the National Records Officer at NPS, will
8 describe the archiving project that is undergoing
9 with the National NAGPRA Program. And I can tell
10 you that this is a major project, many events which
11 came to culmination just this last week, and so you
12 may have questions of both he and the program
13 thereafter. Without any further comment, we'll
14 move right then into that presentation.

15 I should also say he's appearing by the format
16 of open meeting technology. So if I'd ask you to
17 consider not only the content of this next
18 presentation, but the format that we are using,
19 because this is an electronic format where we have
20 a speaker at long distance who's controlling the
21 content as it goes through, so you can both hear
22 and see, as we do in webinars. So this is new
23 technology at your disposal.

24 MELANIE O'BRIEN: Jason, go ahead.

25 **PRESENTATION: THE ROLE OF THE NATIONAL ARCHIVES AND**

1 **RECORDS ADMINISTRATION (NARA) IN PRESERVING AND**
2 **MAKING ACCESSIBLE NAGPRA RECORDS**
3 **PRESENTATION**

4 JASON LAUTENBACHER: Okay. Thank you very
5 much. Again, my name is Jason Lautenbacher, and
6 I'm the National Records Officer for the Park
7 Service. I first want to thank Sherry Hutt for
8 inviting me to speak from sunny and cool
9 Washington, DC. I also want to thank and recognize
10 Sherry for being the driving force behind all of
11 this. She really has brought this project to
12 fruition. Just a couple days ago, I moved about
13 200 boxes of NAGPRA records off to the National
14 Archives.

15 And so the real core of this presentation is
16 to explain to you why we're partnering with the
17 National Archives to really house inactive and
18 legacy NAGPRA records, in the facility that the
19 National Archives has identified for those two
20 particular sets of records.

21 And I'm going to move fairly quickly. I know
22 that we're going to make available the slides, but
23 the next slide is really important. These are the
24 critical elements of our discussion, and we're
25 going to hit every single one of these. But I want

1 to start most importantly with critical
2 definitions. I want to walk through you very
3 quickly four or five definitions that I want you to
4 understand as we go through this presentation,
5 critical definitions that will really explain
6 what's going on.

7 We want to make sure that you understand what
8 a Federal record is, and obviously anything that
9 the NAGPRA Program creates in the course of their
10 business, official business with NAGPRA is deemed
11 to be a Federal record. Electronic information is
12 just a Federal record that you need a machine to
13 read. So the National Archives is actually moving
14 more and more towards electronic records. They are
15 actually – prefer to receive electronic records
16 from Government agencies, and so electronic
17 information, when we say that we are referring to
18 digital records or electronic records.

19 The next two are really important for this
20 presentation, inactive records and legacy records.
21 Inactive records, really quickly, are legally owned
22 by the Park Service and the National NAGPRA
23 Program, and they are all the records that are less
24 than 15 years for paper records. When we talk
25 about electronic records, those inactive records

1 are deemed to be anywhere between one and three
2 years of age. And the reason why it's so
3 dramatically different is because of migration
4 strategies that are necessary to protect electronic
5 information from technological obsolescence. As we
6 all know, technology rapidly changes, and so in
7 order to make sure that we're preserving our
8 electronic records, the National Archives actually
9 requires us to send digital information into their
10 repositories before it is three years old. So when
11 we talk about inactive records, we're talking about
12 records under a certain period of time that still
13 are owned and retained by the Park Service.

14 Legacy records are those records, those paper
15 records that are older than 15 years and those
16 electronic records that are more than 3 years old.
17 And all the legacy material is – legal ownership is
18 actually transferred to the National Archives. And
19 I'm going to explain all of that, what legal
20 ownership is, transference and things of that
21 nature, as we go through the presentation. But I
22 want to make sure that everyone understands those
23 four critical definitions, particularly the last
24 two.

25 Here in the Park Service, we have a Director's

1 Order #11D, and a Service-wide Record Schedule that
2 basically is the – Director's Order #11D is the
3 policy that says that we have to do records
4 management at the Park Service, and the Service-
5 wide Record Schedule is the actual legal agreement
6 we have with the National Archives on how we manage
7 our records. And what that means is we actually
8 sat down with the National Archives in a committee
9 forum to write a records schedule where we
10 negotiated what was permanent and what was
11 temporary. And the two signatories to that
12 agreement is the Archivist of the United States and
13 my predecessor, the former National Records Office.
14 So those are the two really driving policies and
15 legal authority that we have in the Park Service to
16 recognize our records as legal custody or legal
17 property of the United States Government.

18 This is an actual image of the records
19 schedule. This is the records schedule, the piece
20 of the records schedule that is actually covered –
21 that NAGPRA is covered under. So you'll see the
22 Archivist of the United States signature is up on
23 the right-hand side, Adrienne Thomas, and then my
24 predecessor there. And then if you look at the
25 next slide, this is an actual image of the records

1 schedule. And then if you look about halfway down,
2 you'll see A. 3., which is the category that's
3 dedicated to NAGPRA. And I'm going to talk about
4 this a little bit later on, but NAGPRA is the only
5 program office, among hundreds of program offices
6 in the Park Service, that has its own identifier in
7 the records schedule, and I'm going to explain to
8 you why that is in a couple of minutes.

9 So what does the SRS or the Service-wide
10 Records Schedule say about NAGPRA records? They're
11 permanent, so the majority of all the records that
12 the NAGPRA staff are creating are permanent, as
13 deemed by the Archivist of the United States. It
14 is the most important program office in the Park
15 Service, because of its mission-related functions.
16 And the records schedule is very clear in defining
17 the legacy and the inactive records, and that's one
18 of the reasons why we wanted to define those
19 categories for you. The Service-wide Record
20 Schedule actually defines legacy being 15 years -
21 paper records that are 15 years old and electronic
22 records that are less than 3 years old. So those
23 definitions of legacy and inactive records are
24 defined by law in the Service-wide Record Schedule.

25 And I just wanted to define what legal

1 transference means. All Government agencies are
2 required to transfer legal custody of their
3 permanent records to the National Archives after a
4 certain time. So the Park Service, again, for
5 paper records, it's 15 years and for digital
6 records or electronic records it's 3 years. So
7 that process is very strict. Again, it's a legal
8 process that's documented pretty significantly, and
9 I only do transfers to the National Archives in
10 conjunction with the NAGPRA Program Manager. So
11 Sherry Hutt has been involved from the very
12 beginning, and she's been at the table with the
13 National Archives in every conversation we've had
14 about transferring legal custody of these records
15 to the National Archives and what that means. And
16 we're going to talk a little bit about that later.

17 Legal transference basically means that the
18 National Archives takes ownership of these records,
19 legal ownership, and makes them publically
20 accessible to the American people. And that
21 happens when the National Records Officer, in
22 conjunction with the NAGPRA Program Manager,
23 actually signs the legal document, which is digital
24 by the way, it's a digital signature that then
25 transfers legal custody of the records to the

1 National Archives.

2 And that legal – the physical and legal
3 transference, the reason why the National Archives
4 does this is to preserve the records in perpetuity
5 to make sure that everyone in the public has access
6 to these records, with the intent to have FOIA
7 restrictions always at the pinnacle of access with
8 these records. So the National Archives has a very
9 stringent FOIA and access policy when Federal
10 records actually move from Federal agencies to the
11 National Archives, and they are made public. For
12 example, when you access information at the
13 National Archives, one of the things that they
14 immediately redact are personal, identifiable
15 information, and I believe that that timeframe is
16 50 years after the record is created, if I'm
17 correct. But they have a certain ratio where it is
18 – all that personal identifiable information is
19 redacted immediately before records are made
20 available. So the legal transference is something
21 that we're all expected to do as Government
22 agencies, and the whole point of that is to make
23 the records available to the public.

24 And again, it is mandated by law that NAGPRA
25 transfer their permanent records to the National

1 Archives, paper records that are 15 years old and
2 electronic records that are 3 years. And I just
3 wanted to let you know in this slide why the
4 National Archives deemed that. They want to make
5 sure that the priceless story of NAGPRA is always
6 told and available to the American public, and
7 that's really what the National Archive is all
8 about, and that's what these records – why they are
9 so interested in taking these records, to make sure
10 that that story is always told and preserved.

11 So you – everyone may be asking, why do we
12 need a partnership now all of the sudden when
13 NAGPRA has existed for many years. We are coming
14 into a space problem here in Washington, DC. All
15 Government agencies are. And so we wanted to make
16 sure when I met with Sherry in one of our first
17 meetings, we really wanted to make sure that there
18 was a place where we can take these records and
19 store them so they are protected, and also in
20 addition to being protected, but relatively cheap
21 for the Park Service, because the space here in
22 Washington, DC, is extremely expensive.

23 And so National Archives actually has a
24 facility like that called the Washington National
25 Record Center, and that is where all the local

1 Washington, DC, Government agencies actually send
2 their records off for storage in their inactive
3 lives, which means all those records that are
4 within the 15-year period we don't have to leave
5 them here in Washington. They can go to Suitland
6 in a protected, Government-owned building, and the
7 NAGPRA staff will have access to those records
8 within 24 hours. And they also have digital copies
9 available. So if something is paper, Sherry Hutt
10 would be able to request the digital images of
11 those records emailed. So the timeframe could be
12 cut in half from 24 hours.

13 And then of course, when we talk about
14 electronic information, the shrinking budgets of
15 the Federal Government are really going to impact
16 our ability to house electronic records, but most
17 importantly to protect those electronic records
18 from technological obsolescence. That's really the
19 key. When we talk about expensive IT, you know,
20 storage space is relatively cheap. But that, those
21 two words, "technological obsolescence," is a very
22 complicated, expensive thing to do for digital
23 records or electronic records. And the National
24 Archives has a — receives a massive amount of
25 funding from the White House and Congress to

1 actually do special media protection of records.
2 But we have to make sure that we get the digital
3 records to the National Archives before that three-
4 year window, because it gets a lot more easier – or
5 easier for the National Archives to protect those
6 records within that three-year window. And again,
7 their mission, mandated by the President and
8 Congress is to keep these digital records readable
9 forever. And when we say “forever,” we mean – you
10 know, these digital records need to be available
11 forever, and that’s their mission.

12 So once Sherry and I realized that we had to
13 put these records somewhere because of these
14 restraints, I immediately told her, well, let’s
15 bring National Archives to the table and start
16 negotiating and really understand how we’re going
17 to move these records off to their next life. So
18 what we did was in December of 2011, we had a
19 conference with the National Archives, DOI
20 Solicitor’s Office, and myself, and we really went
21 through and hashed out what needs to happen. And
22 we generated a lot of good decisions that came out
23 of that meeting. We talked about legal authorities
24 and redactions. We didn’t necessarily see any
25 significant privacy or FOIA issues. And this is

1 something that may come up in the question and
2 answer session that some of the DOI representatives
3 in the room may be able to talk more definitively
4 on, but a lot of NAGPRA information was already
5 made available to the public via the website. And
6 so we didn't see a lot of those issues.

7 And then afterwards, Sherry and I really
8 decided that we have to lay down standard operating
9 procedures for the Washington office to move their
10 inactive paper records to the Washington National
11 Records Center in Suitland and to move their
12 inactive electronic records directly off to the
13 National Archives at College Park. And if I
14 remember correct, Sherry and I decided that we
15 really wanted to have that as an annual event,
16 where all the records that are created in NAGPRA
17 every 12 months would actually be automatically
18 transferred to National Archives for permanent
19 storage and protection from technological
20 obsolescence. So that's something that we're very
21 serious about, those digital records.

22 And I'm going to explain the difference
23 between the Washington National Records Center and
24 the National Archives at College Park in the next
25 slide because it's really important for you to

1 understand the difference. The Washington National
2 Records Center again is that facility that's
3 dedicated to all the inactive records, and we kind
4 of talked about some of these points, but I wanted
5 to reiterate that it's everything, all the paper
6 records that are less than 15 years old can be
7 stored at WNRC. Last week, as I said before, we
8 shipped off the Review Committee records from 1992
9 to 2010, which were 51 boxes of records, and the
10 grant files between '94 and 2006, which were 90
11 boxes. We just literally did that a couple of days
12 ago. So that was phase one, basically, of this
13 partnership is that we moved these records off to
14 the Washington National Records Center for off-site
15 storage. Now, remember when we sent records to the
16 WNRC, they belong to the National Park Service and
17 NAGPRA, and they will not be made available to the
18 public until that collection of records hits the
19 15-year mark. So I wanted to make that clear, the
20 WNRC is that inactive storage facility. And those
21 two bullets at the bottom explain what actually
22 went, and it took an enormous amount of time and
23 energy to put those collections of records together
24 and prep them for the National Archives. We had
25 elaborate inventory lists and very, very well

1 packed boxes of records. So the NAGPRA Program
2 could easily recall those records when needed.

3 The National Archives at College Park is the
4 actual archives of the United States. It's where
5 all of the legacy records go where they're
6 accessioned into the archives and made available to
7 the public over time, and again, when records move
8 to the National Archives at College Park, we're
9 actually giving legal custody of the records to the
10 National Archives, again, with the mission to make
11 the records public – publically available. And
12 again, it's the 15-year rule and the 3-year rule,
13 and we've actually already sent the electronic
14 transcripts of the Review Committee between '92 and
15 2010. Those records I was confirmed this morning
16 that the National Archives has taken legal and
17 physical custody of those records. So they are in
18 the process right now of translating or moving that
19 information off of its Native format, which I
20 believe are floppy discs and diskettes or CD-ROMs
21 into digital formats. And that's the process that
22 they're going to do as we speak, converting that
23 information over to a more suitable and a safer
24 medium.

25 And again, I just want – that was a very brief

1 explanation of what we were doing. I want to, I
2 guess, yield the rest of the time to offer
3 questions up to the Review Committee.

4 **REVIEW COMMITTEE QUESTIONS AND DISCUSSION**

5 ROSITA WORL: Questions, Review Committee?

6 I have a couple. Insofar as significant
7 property or FOIA issues, I recall that at one
8 Review Committee meeting we had a tribal member
9 share information and that tribal member
10 specifically noted that this information ordinarily
11 wouldn't have been shared and – but that person
12 wanted that information, I think he violated his
13 own tradition in order for us to be able to have
14 information to be able to make a decision. And I'm
15 wondering how that would be treated. I don't think
16 that individual anticipated that that information
17 would be publically available for all eternity
18 without their permission.

19 SHERRY HUTT: The information coming before the
20 Review Committee is public record. You'll see when
21 we post a notice for the Review Committee or we
22 post a notice for comment on regulations or
23 consultation meetings, there's a caveat in every
24 notice that says that which you provide is a public
25 record. That, by law, becomes then a public

1 record. When we – the redaction issue is one that
2 we have not yet resolved with regard to inventories
3 and summaries, where there may have been – pictures
4 or sensitive information that was presented may be
5 in excess of what was required in the summary or
6 the inventory that may require some redaction, and
7 that we have to look at, which is why we haven't
8 transferred summaries or inventories. But as to
9 anything that would come before the Review
10 Committee it's a public statement. Have I –

11 CARLA MATTIX: Under the Federal Advisory
12 Committee Act, all of the Review Committee's
13 meetings are open and public and any of the
14 materials produced are available to the public.
15 That's a statutory requirement. There's no – there
16 are no FOIA-like exemption provisions to protect
17 information that has been made public at one of
18 these meetings. Review Committee meetings, there
19 are opportunities if in advance we know something
20 that is going to be presented, meetings can be
21 closed, but that is a procedure that has to get
22 approved through the Department in advance. But
23 generally our meetings are not closed. They're
24 open and the materials are public.

25 ROSITA WORL: Then it seems to me we need to

1 put that as an issue that we need to advise tribes
2 and consult with tribes, so that they are aware of
3 it. I don't know that, you know, saying this is
4 public and it forever will be public is adequate
5 for our responsibility. So I think we need to add
6 that to our work with tribes to let them know and
7 then develop a process whereby that information may
8 – they may choose to disclose that information. So
9 let's add that to our – some work that we need to
10 address and a process of how we will work that
11 through with the tribes.

12 The second question relates to use of the
13 material. I know that we have had clans sing songs
14 that are owned by the clans, and I know that in
15 history we've seen those songs come out on a
16 commercial radio station. And I don't – the clans
17 in this instance aren't worried about the public
18 use of it, as long as the clan ownership is
19 recognized. But they certainly would not allow for
20 commercial use, so I'm wondering how we restrict
21 the use of the material that is collected, whether
22 it's for, you know, research, you know, making
23 decisions. But are there any restrictions on its
24 commercial use?

25 CARLA MATTIX: Materials that are made

1 available to the public under FOIA or that are
2 housed at the National Archives, once they become
3 property of the National Archives, they don't have
4 restrictions regarding how the requester uses that
5 material, such as commercial use restrictions.

6 There are instances in the National Park Service
7 with respect to scientific data information and
8 things like that where we will have the requester
9 sign an agreement, if they haven't made a request
10 under FOIA but just under other relationships -
11 sign an agreement that they will only use the
12 material for educational, research type of uses.

13 But generally under FOIA if somebody requests
14 it, there's nothing pursuant to FOIA that allows us
15 to restrict the third-party use of that material.
16 The only restrictions on that material are other
17 laws themselves. If somebody requests something
18 from the Government under FOIA and that material is
19 copyrighted under U.S. laws, then that requester
20 has to comply with copyright laws, you know. They
21 have to comply with any laws that are specific to
22 that material, so FOIA doesn't exempt them from
23 that. However, we don't put specific restrictions
24 on it when they receive the material.

25 ROSITA WORL: Again, I guess we have a

1 responsibility, again, to tribes to let them know
2 that they either have to copyright the material,
3 you know, the songs that they're bringing to us or
4 the stories, and so let's again look at that,
5 identify that as an issue, responsibility that we
6 have.

7 Any other questions or comments?

8 Okay. Well, thank you very much for that
9 presentation. It came across really well. Your
10 voice – we heard you really well, and we could see
11 the visuals, and it was – you have a good assistant
12 over here processing the information for you.
13 Thank you very much.

14 JASON LAUTENBACHER: Thank you, everyone.

15 ROSITA WORL: Okay. We are ready for our next
16 agenda.

17 SHERRY HUTT: Yes, and the next item on the
18 agenda would be the Coconino National Forest and
19 Hopi Tribe Repatriation Project, a status report.
20 I believe you heard from Leigh yesterday. This
21 morning we have Anna Berg from the Museum of
22 Northern Arizona; Peter Pilles, Professor Peter
23 Pilles, Coconino National Forest; Arleyn Simon and
24 Kim Spurr, Museum of Northern Arizona.

25 And Madam Chair, Kim Spurr had time separate

1 from the others. They're somewhat combining.
2 They're going to use most of their time on the
3 Coconino National Forest/Hopi Tribe report, and
4 then she's reserved ten minutes on the research
5 study that she'd like to share with you.

6 ROSITA WORL: Welcome.

7 **PRESENTATION: COCONINO NATIONAL FOREST/HOPI TRIBE**

8 **REPATRIATION PROJECT - A STATUS REPORT**

9 **PRESENTATION**

10 PETER PILLES, JR.: Madam Chair, Committee
11 members, members of the audience, I'm pleased to
12 introduce our team to give you a progress report on
13 the Coconino National Forest/Hopi Tribe NAGPRA
14 Repatriation Project. I am Peter Pilles, Coconino
15 National Forest Archeologist, and I have the
16 responsibility for coordinating and assisting the
17 efforts of the many institutions and people who are
18 working on this project. With me today are some of
19 the major participants in the project: Anna Berg,
20 NAGPRA Coordinator for the Museum of Northern
21 Arizona; Arleyn Simon, NAGPRA Coordinator for the
22 Arizona State University; Kimberly Spurr, Museum of
23 Northern Arizona, Bio-anthropologist for the
24 project; and Leigh Kuwanwisiwma, Director of the
25 Hopi Cultural Preservation Office.

1 We have completed two of the four reburials
2 that are scheduled for this project, and hope that
3 the challenges we faced and our lessons learned so
4 far will be of benefit to others who are just
5 beginning their own NAGPRA projects. To deal with
6 such a large project, a team of over 70
7 archeologists, curatorial staff, administrators,
8 bio-anthropologists, and tribal consultants have
9 been assembled to prepare these remains for
10 repatriation to the Hopi and Zuni Tribes. The
11 Museum of Northern Arizona is our lead institution,
12 as it has conducted most of the excavations on the
13 forest since the 1920s, it's located near our
14 headquarters, and has a staff with experience in
15 the archeology of Flagstaff and the Verde Valley,
16 and proper curatorial facilities to store and
17 document the materials. Consequently, human
18 remains and artifacts from other institutions are
19 being sent to the museum for temporary storage and
20 inspection before they are reburied.

21 Contrary to much of what we heard yesterday,
22 about agency, repository and tribal relationships,
23 we have a unique advantage over many agencies in
24 that there was a historical relationship between
25 the Coconino National Forest, the museum and the

1 Hopi Tribe for over 90 years. The museum was
2 established in 1927 and a forest supervisor was on
3 the museum board of trustees for many years. The
4 museum was instrumental in promoting Hopi arts and
5 crafts through their Hopi Craftsman Show since the
6 1930s and has worked closely with the Hopi people
7 in its long history of archeological research in
8 the region.

9 As for my place in this relationship, I was an
10 archeologist and administrative assistant for the
11 museum for ten years, and have specialized in the
12 archeology found on the forest for about 40 years.
13 Consequently, I'm very familiar with the museum's
14 personnel, records and collections, as well as its
15 catalogue system. Most importantly, I have worked
16 with the Hopi as colleagues and as friends during
17 this time and helped develop a relationship between
18 the forest and the Hopi Tribe that until recently
19 was a model example of Federal and tribal
20 cooperation that has lasted for over 25 years. We
21 are also fortunate that the Hopi Tribe has
22 delegated signatory authority to Leigh
23 Kuwanwisiwma, as Director of the Hopi Cultural
24 Preservation Office, to make decisions on cultural
25 matters on behalf of the Hopi Tribe. This has

1 greatly reduced and facilitated the consultation
2 time that would otherwise have been needed to make
3 the many and varied decisions related to this
4 project.

5 These copacetic alignments of previous
6 historical relationships enabled us to immediately
7 hit the ground running when we received the Hopi
8 letter requesting repatriation of human remains and
9 associated materials in 2009. We realized that
10 NAGPRA was a two-edged sword. On one hand, a
11 significant data set pertaining to the prehistory
12 of Northern Arizona would be returned to the earth,
13 closing any future possibilities to work with these
14 materials to better understand the Prehistoric
15 Sinagua culture. On the other hand, this presented
16 an opportunity to reevaluate these collections with
17 the benefit of over 80 years of research
18 perspective to provide consistent identifications
19 and documentation of the human remains and
20 artifacts that could be used to test various
21 interpretations of Sinagua society, interaction
22 between local communities, and relationships with
23 adjacent culture areas. It also provided an
24 opportunity to reunite and document early
25 collections that had never been studied before they

1 were transferred to various institutions. However,
2 despite these opportunities, with few exceptions no
3 archeologists have come forward expressing interest
4 to study these materials.

5 As we got into the project, we soon learned
6 that we faced a number of challenges before the
7 NAGPRA materials could be repatriated: verification
8 of land status at the time the sites were excavated
9 was needed to confirm which sites were on National
10 Forest land; coordination for the return of
11 collections in various institutions in time to
12 coincide with the scheduled reburial dates; finding
13 locations for reburial that could be adequately
14 monitored and assured of permanent protection from
15 future disturbance. Perhaps the most time-
16 consuming activity has been to ensure the
17 documentation of human remains and artifacts meet
18 current standards and is accurate and consistent
19 between the various institutions.

20 A number of meetings were held with the Hopi
21 and Zuni to discuss these issues and reach
22 agreement on the level of analysis and types of
23 documentation for human remains and artifacts that
24 were acceptable to them. It was decided to use the
25 Ubelaker-Buikstra forms as a format for documenting

1 human remains. Photography was permitted as the
2 most efficient and reliable way to document
3 pathologies and anomalies. Artifact documentation
4 would be based upon the forms developed by Arizona
5 State University for the Roosevelt Dam project.
6 Reburial locations and the sequence in which
7 burials would be grouped was based upon Hopi Clan
8 origin traditions, starting with the Verde Valley,
9 then sites around Flagstaff, and finally with the
10 Anderson Mesa area. Reburial locations were
11 selected in consultation with Hopi in the vicinity
12 of sites from which the burials originated. They
13 are within or are sufficiently adjacent to
14 archeological sites that can be included within the
15 formal site boundaries defined in Forest Service
16 archeological records, to enable their future
17 projection under ARPA, as well as from future
18 project activities.

19 As collections were assembled, it was found
20 that identifications of ceramic types and
21 institutional records were inaccurate or had not
22 been upgraded as changes in ceramic typology had
23 developed over the years, since the sites had been
24 excavated. Considerable time has been spent to
25 examine and update these records to current

1 standards.

2 Another issue we face is how to deal with
3 collections that were illegally excavated years ago
4 and that are now located in museum collections.
5 Documentation of these collections is variable and
6 determining which items are NAGPRA items and
7 whether or not they came from forest lands is a
8 challenge we're still working on.

9 So what have we learned in our exercise so
10 far? From an archeological perspective, we have
11 been able to learn much by having the opportunity
12 to have updated a review of the artifacts and
13 burials that have been excavated from the Coconino
14 National Forest for over one hundred years.

15 Individual site differences are being noticed
16 between artifacts, age and sex groups in burial
17 patterns and associated artifact distributions.
18 These will provide new insights into understanding
19 relationships within and outside the Sinagua
20 culture area in the future. Time and timing are
21 the most critical factors that we have had to deal
22 with.

23 As the coordinator of the project, it's been
24 difficult to find the time needed for this in
25 addition to my other responsibilities. I have

1 found that about ten hours a week is required to
2 deal with the demands of the project, working full-
3 time for the two to three weeks preceding the
4 actual reburial in order to deal with last-minute
5 details. Sufficient time needs to be provided for
6 consultations and decision making, as all parties
7 will be confronted with issues they have not
8 previously dealt with. A NAGPRA project needs
9 archeologists with expertise in the local ceramics
10 and artifact types, burial patterns, and the region
11 in order to make learned, justifiable decisions
12 about what artifacts are and are not NAGPRA items
13 and to confirm the adequacy of documentation
14 provided by the institutions.

15 Knowledge about the history of archeological
16 work in the area is also needed to help agencies
17 and tribes identify NAGPRA collections that they
18 and institutions may not know they have. For an
19 example, an important site on the forest was
20 excavated by the Smithsonian Institution in the
21 1920s, but was never adequately reported. Portions
22 of the collection were sent to a number of
23 institutions in the 1930s without clear provenience
24 information, with the result that these
25 institutions were not aware that they had burial

1 material or that those artifacts were not listed on
2 their NAGPRA inventories. Since the Smithsonian
3 has a different repatriation authority than NAGPRA,
4 we're now working with the Hopi Tribe so they can
5 formally request a return of these items from the
6 institutions in time to be united with the other
7 materials from the site that will be part of our
8 next reburial.

9 Existing institutional records and inventories
10 are inaccurate. Estimates of the number of
11 individuals had been significantly reduced, once
12 the human remains have been examined in a
13 consistent manner by an experienced bio-
14 anthropologist. However, additional remains and
15 UFOs continue to be discovered, despite the best
16 efforts of agencies and institutions to minimize
17 this. Collections from institutions must be
18 assembled with sufficient advanced time to check
19 identifications and redo documentation and
20 photography, if necessary. Coordination is needed
21 between key players regarding the inventory
22 process, burial relocation site selection and
23 logistics to bring everyone and everything together
24 at the right time.

25 In sum, I wish to emphasize this is not just a

1 Forest Service project. It is only succeeding
2 because all parties involved are operating as a
3 team. It takes everyone working cooperatively and
4 in communication with each other to keep the
5 project moving along smoothly and on time. Thank
6 you for your attention. I now would like to turn
7 the program over to Anna Berg of the Museum of
8 Northern Arizona.

9 ANNA BERG: As Peter said, my name is Anna
10 Berg, and I'm the NAGPRA Collection Specialist at
11 the Museum of Northern Arizona. And I'm going to
12 talk about how we're preparing for this
13 repatriation at MNA and then share some of the
14 lessons we've learned and the challenges we've
15 encountered along the way. Can everyone hear me
16 okay?

17 Okay. Well, due to the large amount of
18 materials and level of documentation needed, we've
19 gathered a team to prepare all of the materials for
20 repatriation, and I'll summarize our tasks briefly.
21 As NAGPRA Collection Specialist, I manage day-to-
22 day coordination of the project at MNA and
23 photograph and pack all funerary objects. Most
24 importantly, I maintain physical and intellectual
25 control of all repatriation materials throughout

1 the process. We realized early in the process that
2 a procedures manual would be needed to guide this
3 process, and I am responsible for writing the
4 manual. The manual also ensures consistency and
5 provides an explanation for people in the future to
6 understand our methods. We also hope that it might
7 serve as a potential model for others working on
8 similar projects.

9 Our records specialist fills an important role
10 by verifying the land status of sites with NAGPRA
11 materials and providing the team with a complete
12 list of sites for the repatriation. She also
13 gathers all relevant information about burials so
14 that we have as much information as possible to
15 ensure accurate documentation. One example of how
16 important this is is that over – through her
17 investigations, she's added about 25 sites that
18 weren't included on our inventory notice initially,
19 so a lot of additional sites that we weren't aware
20 of.

21 The project bio-archeologist, Kim Spurr,
22 documents the human remains and checks faunal
23 collections for human remains, and she'll speak
24 later in more detail about her activities. We also
25 have two collections assistants working on the

1 project. And one assistant documents all of the
2 funerary objects, and the other is processing all
3 of the bulk materials to check for previously
4 undocumented burial items and human remains.

5 The Forest Archeologist, Peter, advises us on
6 the project and makes decisions about funerary
7 objects. More importantly, though, is the
8 expertise he offers due to his past archeological
9 work in the region, his knowledge of sites and MNA
10 records, and his long-standing relationship with
11 MNA and Hopi. He plays a critical role in making
12 this entire project successful. We also have
13 oversight from the museum's collections manager and
14 our registrar handles the deaccession process.

15 Now that I've summarized the tasks we are
16 working to complete, I'd like to relate some of the
17 lessons we've learned and challenges we've met in
18 working on this project. Due to the size of this
19 project, it was apparent early on that an
20 additional staff person would be needed to
21 coordinate the efforts of the museum. This has
22 proved true, and having a coordinator has ensured
23 more consistent and organized work on the project.
24 Also having one person who is aware of all aspects
25 of the project creates a more cohesive, effective

1 team.

2 We have also found that if the whole team
3 works in tandem on the same site at the same time,
4 when problems or questions arise, everyone is on
5 the same page and can address issues from their
6 perspective, saving time and preventing duplication
7 of efforts. It also provides team reinforcement
8 for knowing how documentation is going and what we
9 are learning.

10 An unexpected situation we encountered
11 involves our bulk archeological and faunal
12 collections. We soon found that human remains and
13 undocumented funerary objects were mingled with
14 nonburial items throughout the collection, and as a
15 result, we have sorted through all bulk
16 archeological materials, which meant additional
17 time to catalogue materials, as well as further
18 consultation with Peter. We also realized that a
19 trained bio-archeological was needed to check the
20 faunal collections for human remains missed in
21 previous searches.

22 The biggest surprise we encountered, and Peter
23 mentioned earlier, was a discrepancy in the total
24 number of individuals affected by this repatriation
25 at MNA. When the human remains records were

1 counted for the Notice of Inventory Completion in
2 1997, they included as individuals catalogue
3 records that actually represented an element or
4 elements of an existing individual, thus
5 essentially counting an individual more than once
6 and sometimes several times over. This means that
7 there are far fewer individuals at MNA than
8 originally reported. And we anticipate that we
9 will decrease the total number of individuals by 30
10 percent.

11 One of the most overarching challenges we've
12 dealt with is the limitations of our existing site
13 records. Excavations go back to the 1930s and
14 field documentation over time is inconsistent at
15 best. Some sites have no information whatsoever;
16 others have extensive field school notes of varying
17 relevance. Sorting through all of this archival
18 material for information on land status, funerary
19 objects and burials has been an adventure and
20 proved critical to completing this project.

21 Potential funerary objects found in bulk
22 storage have also proven challenging. When
23 encountering these materials in bulk storage, we
24 needed to establish protocols for determining AFO
25 status. This primarily required interpreting loose

1 definitions of "associated with" because many of
2 the sites' burials were located in trash mounds,
3 identifying which objects were trash and which were
4 associated with the individual was a challenge.
5 Often, all material excavated from the burial pit
6 was marked as "associated with burial," even though
7 only a portion of the materials were actually
8 placed with the individual as burial items. Peter
9 has focused on interpreting these different
10 contexts and identifying site-wide patterns, and
11 the criteria he uses to identify AFOs is then
12 included in our procedures manual, although this
13 necessarily varies by situation.

14 On ongoing challenge that we have just begun
15 to address is identifying UFOs in our gift
16 collections. Many of these collections are old,
17 poorly documented, pot-hunted collections. We
18 handled these items on a small scale in our first
19 reburial, but developing a protocol for how to deal
20 with these materials is a task that we will be
21 undertaking on a larger scale in the coming years.

22 I'd just like to conclude that by saying that
23 despite all of these challenges that this project
24 has overall been a great opportunity for the museum
25 to improve the quality of records and documentation

1 for these collections, and hopefully our
2 experiences can be informative and useful for
3 others working on or anticipating similar projects.

4 And now I'd like to turn it over to Arleyn
5 Simon, who is going to talk about Arizona State
6 University's efforts.

7 ARLEYN SIMON: Thank you. I'm Arleyn Simon
8 from Arizona State University. Can you hear me all
9 right?

10 ROSITA WORL: Could you pull it closer to you,
11 please?

12 ARLEYN SIMON: Okay. Can you hear me better?
13 Arleyn Simon from Arizona State University, and I'm
14 going to summarize our work with a very large
15 archeological collection called the Chavez Pass
16 Collection from the Anderson Mesa area that Peter
17 mentioned. This site was first excavated by Fuchs
18 (phonetic) back in 1896, and those collections
19 reside at the Smithsonian. And in the 1970s,
20 Chavez Pass had become the victim of extensive
21 looting with massive amounts of human remains
22 strewn across the surface. In '76, the Forest
23 Service took aggressive action to stop the looting
24 and brought in archeologists from ASU and Tempe to
25 help salvage the human remains and properly recover

1 and record burials that had been exposed in
2 numerous looter pits. ASU continued work at the
3 site for six field seasons, and part of that
4 included site survey of small habitations in the
5 area to better understand it.

6 Echoing what has just been said about minimum
7 numbers of individuals, the NAGPRA notice lists
8 1,930 individuals, but this is based on individual
9 element identifications in a lot of these surface
10 scatters that were disarticulated and very mixed on
11 the surface. So our work is resulting in reducing
12 this total count substantially.

13 As Craig and others have mentioned, we often
14 times have to do archeology on the archeology to
15 understand what happened at the site and to try to
16 contextualize the collection. To accomplish this,
17 we have teams –

18 ROSITA WORL: I'm sorry, but could you speak
19 closer into the mic? I think you're fading in and
20 out.

21 ARLEYN SIMON: Oh, I'm sorry. To accomplish
22 this, we have teams of staff, trained graduate
23 students, and undergraduate interns that are
24 concurrently documenting human remains, separating
25 the funerary objects from the bulk collections, and

1 delving through six years of field notes to provide
2 context for the collection. The collection is too
3 large to have in any one available space during the
4 documentation process, so we use electronic
5 recording with laptops, wireless networks, and
6 files on a common server to bridge and coordinate
7 across teams working in three different buildings.
8 Essential to the project context was reconstructing
9 and articulating the various maps. These were
10 scanned on a large format scanner and overlaying on
11 quad maps and Google Earth images to rectify and
12 geo-reference them.

13 An added complication was the first season's
14 fieldwork grid system was compromised after stakes
15 were removed from the site, and the second season a
16 new grid system was established with a different
17 orientation. Thirdly, an additional separate map
18 was located indicating the looter pits, back dirt
19 and transects of the collection. So articulating
20 these all together has been essential to
21 deciphering the notations on the boxes and the bags
22 and the field records. In doing this, we are able
23 to make sense of potentially related loci and
24 contexts across these multiple seasons of field
25 work. The physical anthropology team, in

1 particular, is looking at the collection
2 holistically and including looks at formation
3 processes, including the facts of the looting
4 activities.

5 Originally, the MNI was put together based on
6 individual boxes collected from small areas,
7 assuming that the collection was too mixed to be
8 able to join skeletons of particular individuals.
9 However, our team working with the collection
10 sometimes has as many as six or eight boxes from a
11 given transect out at one time and has been able to
12 match distinctive individuals among these different
13 boxes. Needless to say, the material, the human
14 remains that were on the surface were badly
15 weathered and differentiating characteristics are
16 not as easy to make on these as the material
17 recovered from the actual looter pits and
18 excavations. So we are making very good attempts
19 at differentiating unique individuals and rejoining
20 these elements, and then reassessing the counts of
21 the remaining comingled remains.

22 Our study shows that it is possible to gain
23 more understanding of the collection by working
24 with it in this systematic way. We believe this
25 approach, which the other museums are using too, is

1 more meaningful to the documentation, repatriation
2 and reburial process than the original MNI
3 approach. The final result will be a more
4 realistic and smaller estimation of burial
5 populations than that reported in the original
6 inventory.

7 The magnitude of the site size, the looting
8 damage, and multiples seasons of field work and the
9 total size of the collection makes this a very
10 challenging task. However, through the support and
11 cooperation of the forest and the Hopi Tribe, we
12 are able to undertake this in a fairly timely
13 manner. I would like to note that this project is
14 also providing training opportunities for a new
15 generation of professional anthropologists on the
16 importance of the NAGPRA process and the conduct of
17 documentation with awareness of cultural
18 sensitivity. So we appreciate being a part of this
19 large group effort and the extensive planning that
20 went into helping it move along so successfully.
21 I'll now turn it over to Kim, our next speaker.

22 KIMBERLY SPURR: Good morning, Madam Chair,
23 members of the Review Committee. Can you hear me
24 all right? My name is Kimberly Spurr. I am a bio-
25 anthropologist with the Museum of Northern Arizona

1 in Flagstaff, and I'd like to address you this
2 morning to discuss specifically the bio-
3 archeological documentation of human remains from
4 the Coconino National Forest that are currently
5 housed at the Museum of Northern Arizona.

6 The primary goal of our documentation of these
7 human remains is to provide information that will
8 assist Hopi during the reburial, and the
9 information that we're providing to them includes
10 the age at death of each individual, the biological
11 sex of each individual, the completeness of the
12 remains, and the type of burial, for instance,
13 whether it's a cremation, an inhumation, whether
14 it's a single interment or multiple, or whether
15 it's isolated human bone.

16 The second goal of this documentation is to
17 gain information that will be useful to Hopi and
18 other researchers that shows evidence of genetic
19 relationships among the Sinagua and other
20 Prehistoric culture groups in the area, and also
21 between the Sinagua and modern tribal groups. This
22 is of interest to many of the tribal groups in our
23 area, and so we are really trying to emphasize this
24 in the documentation.

25 In order to do this, we mainly emphasized

1 dental and skeletal traits that have occurrences at
2 higher or lower frequencies among the
3 subpopulations, the regional populations of the
4 Sinagua that we are dealing with, and then we can
5 look at those in comparison to other Prehistoric
6 and modern groups. We're also looking for unusual
7 or unique dental or skeletal traits that are
8 indicative of genetic anomalies that will let us
9 trace specific traits across populations. We're
10 also documenting patterns of pathology that can
11 give insight into the health of the Prehistoric
12 Sinagua population, things such as nutritional
13 status, infant mortality rates, the types and
14 frequencies of chronic diseases, the types and
15 frequencies of traumatic injury.

16 The methods that we're using during this
17 documentation process are standard to bio-
18 archeology and, in fact, are based on procedures
19 that were established after the passage of NAGPRA
20 to ensure consistent documentation across multiple
21 collections and by multiple institutions. There's
22 absolutely no destructive analysis of any human
23 remains. The human remains are not washed or
24 reconstructed in any way, and one of the main
25 emphasis points of this documentation is to always

1 treat the human remains with the respect and care
2 due to the ancestors.

3 Our documentation involves, as I mentioned, an
4 inventory and condition assessment of all human
5 remains, establishing age at death and biological
6 sex for each individual when that is possible,
7 taking measurements of the skeletal elements which
8 is important for establishing age of juvenile
9 individuals. It's also important for establishing
10 stature estimations for adults, and this is one way
11 that we look at differences across populations.
12 We're also documenting evidence of pathology and
13 trauma, as I mentioned, and morphological traits
14 that are used in looking at genetic relationships
15 among populations. After consultation with the
16 Hopi Tribe, as Peter mentioned, we're not
17 systematically photographing human remains. We are
18 photographing only pathologies or genetic anomalies
19 that are difficult to describe accurately, so that
20 we can be sure of consistent documentation on this.

21 Once the remains are documented, they're
22 rehoused in natural materials and reassociated with
23 their funerary objects in preparation for reburial.
24 I should note that about 60 percent of the remains
25 from the Coconino Forest have been previously

1 documented for various other projects, and we're
2 finding that we have a better than 90 percent
3 correspondence in our documentation in terms of age
4 and sex groups, which is heartening to know that
5 the original inventories were close.

6 But one of the things that we're really
7 finding is that it's crucial to have qualified bio-
8 archeologists do this type of work. We – as Anna
9 mentioned, we are resorting all faunal bone that
10 came from sites with human remains. A few years
11 ago, the museum received a NAGPRA grant to go
12 through all of their faunal remains. Unfortunately
13 the woman who undertook that project had limited
14 experience with human remains, and in sorting
15 through it again for this project, we're finding
16 that what was missed were juvenile skeletal
17 elements and cremated human bone, both of which can
18 be very difficult to identify if you're not
19 familiar with human remains.

20 Once we sort through all of the faunal bone,
21 any human remains that are identified then are – we
22 attempt to reassociate those with known burials
23 from the site. And we do this by looking at the
24 provenience of where both elements came from and
25 the age and sex distribution of burials in that

1 area. We have – depending on the site
2 documentation, it depends on how well the
3 provenience was documented, we have 40 to 60
4 percent success rate in reassociating isolated bone
5 with known burials.

6 The other lesson that we've learned, and Anna
7 alluded to this as well, is that the number of
8 identified individuals, the MNI, can change
9 significantly during this process, and change – I
10 mean, in terms of how it compares to the original
11 inventory. The identification of new individuals
12 from isolated bone or from faunal bone or in going
13 through the old records and realizing that there
14 are multiple burials in what was called a single
15 burial, this can increase the number of individuals
16 from a site that we've identified new individuals.
17 But conversely, we're finding that we have a big
18 reduction of the number of individuals at some
19 sites because, as Anna mentions, isolated bone was
20 often given a distinction as a human remain.

21 So the important point, the reason we keep
22 mentioning this, I think, is that I know a lot of
23 the tribal representatives are very concerned when
24 these numbers change and – as well they should be,
25 but we want to make this a transparent process and

1 indicate that the museums are not playing a shell
2 game here. We are trying. In doing further
3 documentation, we are finding that the inventories
4 were incomplete because the processes weren't
5 followed.

6 On behalf of the entire project staff, we
7 greatly appreciate the Hopi Tribe's willingness to
8 allow the documentation prior to repatriation. And
9 in addition to facilitating appropriate reburial
10 for these human remains for these ancestors to go
11 back, we hope that the information we can provide
12 will be helpful to Hopi and to other scholars who
13 are seeking to understand how people have migrated
14 around the Southwest through time. We also hope
15 that this presentation has helped the Review
16 Committee understand some of the logistical and
17 hands-on, if you will, details of some of these
18 projects in a closer focus. I'd now like to turn
19 the microphone over to Leigh Kuwanwisiwma.

20 LEIGH KUWANWISIWMA: Thank you. Much of what
21 the presentation – much of what was said during the
22 presentation in terms of the research into the –
23 further research into these remains, I think, was
24 brought forward by the Hopi Tribe themselves. I
25 know that that particular effort that's sometimes

1 desired is controversial within tribes, but in the
2 case of these remains and other remains we've dealt
3 with, the Hopi Tribe was also interested in certain
4 types of data. And the resources, thankfully, were
5 locally available so I think we did serve both the
6 scientific community, as well as the tribal needs
7 through different types of research questions that
8 we were also interested in, and I want to make sure
9 that was stated for the record as well.

10 I guess from the Hopi Tribe's perspective in
11 the roles that they had to carry out, we developed
12 over time, as you know, I think in '92,
13 thereabouts, the tribe, and I was personally
14 involved with my first reinterment situation. And
15 over time, of course, we've learned as to how the
16 culture would treat repatriation and also
17 reinterment. So part of our job was to now
18 formalize, if you will, the cultural protocols as
19 to how the burials were to be conducted.

20 Of course, many tribes don't have reburial
21 ceremonies, and that was the initial challenge and
22 still is the challenge by Hopi and other tribes,
23 and that underwent a significant debate within the
24 Hopi villages and as well as the cultural advisory
25 team. But a few of the Hopi advisors stepped

1 forward, primarily noting ethical and moral
2 responsibilities to again receive and, of course,
3 rebury the individuals. So that was one step we
4 had to take in terms of taking responsibility.
5 Specifically, we now have, I think, advised the
6 agencies on, one, the segregation of some of the
7 individuals. We've dealt with everything from
8 disarticulated remains, primarily small bones, if
9 you will, to full skeletal remains. Those are
10 treated differently today by myself and others.
11 Mother/infant, we made sure that they were also
12 segregated in another part of the burial area.
13 Infants were also segregated, and as well as mother
14 and infants. I think we had a few of those within
15 Coconino. So we provided those kind of guidance to
16 the teams that helped us.

17 The other question that was posed to us was
18 whether or not because of the enormity and the
19 numbers that we were going to handle on the
20 reburials, whether or not the forest should dig the
21 common area a day before or during that week we
22 were preparing to come in and rebury. Hopi's don't
23 do that. Typically the family, of course, upon
24 death then proceeds with actually the burial. So
25 that was something we had to talk about out at

1 Hopi, as well as to whether or not we would have
2 any public reaction if, in fact, we decided to dig
3 the trench beforehand. Logistically, we were, of
4 course, dealing with a lot of individuals, and if
5 the Hopi Tribe had elected to dig the common areas,
6 burial areas, on the day that we had scheduled the
7 reburial, then there would be the possibility of
8 not completing all of the reinterment and then
9 having to leave that particular area open during
10 the night, which was again another cultural
11 concern.

12 So ultimately we decided to have the trench
13 available and ready at the time that I and one
14 individual arrived, and that helped expedite the
15 reinterment. And on all of our reinterments,
16 including those that we did with the Park Service,
17 we were fortunate to be able to finish by the end
18 of the day, sometimes late evening, so that again
19 the backfilling would occur, which again was what
20 the tribe was interested in having performed.

21 So those were some of the protocols we had to
22 decide on. Other protocols included the actual
23 handling of remains once the reburial occurred. We
24 advise against females directly handling the
25 remains. We also decided that females, inasmuch as

1 they were non-Hopi, could not go into the burial
2 areas. But we allowed other male employees to help
3 us once the laying down of the individuals began,
4 and that helped again expedite the reburial during
5 the course of the day.

6 Prior to the reinterment, of course, we would
7 talk about how we should, from the Hopi standpoint,
8 prepare ourselves. So that was important to both
9 myself and also that individual that was helping
10 the – with the repatriation and the reburial,
11 Mr. Wilton Kooyahoema. So during the course of the
12 day, we would perform that and then every – after
13 the reburial was fully conducted and finished, then
14 we would perform a cleansing ceremony, not the kind
15 that we usually do during modern burials, but an
16 abbreviated one. And it was up to the non-Hopis as
17 to whether or not they would actually participate
18 in that we welcomed it. So you know, I think
19 almost everyone went through the smudging and
20 everything else that we asked them to do. Then of
21 course, special prayer feathers are made for the
22 burial ground and for the individuals, and that was
23 the responsibility of the cultural advisor,
24 Mr. Kooyahoema, to do.

25 Some of the things that we had to also honor

1 or respect was that after each burial, like today,
2 the men performed the burials and the men are then
3 required not to be in the immediate vicinity or
4 touch infants or young children. So that was,
5 really between myself and the cultural advisor to
6 honor, and that's what happened for four days after
7 the reburial, we had to – in our case, inform our
8 families of the reburial and what we had to do
9 after it was finished.

10 So those were some of the cultural protocols
11 that we provided, in addition to lending through
12 consultation a lot of really our decisions by the
13 Hopi Tribe. And as Peter mentioned, the tribe
14 council – the tribal council in 1994 on the advice
15 of our religious and traditional leaders delegated
16 full authority under tribal law by delegating me
17 full authority to enter into – negotiate and enter
18 into all agreements on behalf of the Hopi Tribe.
19 So that, I feel, helps in also facilitating and
20 streamlining really the decision-making process
21 whereby we don't have to go to the tribal council
22 on every question. So I think that's something
23 that I've learned to use within the work we do
24 under NAGPRA.

25 So at any rate, we have several more with

1 Coconino reburials scheduled, one this fall,
2 another one hopefully on 2013 and try to conclude
3 by 2014. As I mentioned yesterday, this is the
4 single largest collection of human remains
5 nationally in which the Hopi Tribe is involved.
6 We're dealing with probably approximately 3,000
7 total and about 5,000 funerary objects. That's in
8 addition to the other big collections that Hopi has
9 helped with in terms of repatriation reburial. The
10 first was up in Chaco Canyon. The Hopi Tribe did
11 the reburial for approximately eight to nine
12 hundred individuals. Mesa Verde came in next with
13 about 1,400. The BLM had about 600 up in Dolores,
14 Colorado. And we're also concurrently working with
15 the Bureau of Indian Affairs and the White Mountain
16 Apache Tribe to repatriate about fourteen, fifteen
17 hundred down on the White River Reservation. So
18 there's still more to be, again, done in terms of
19 the process. So I guess that's simply, I guess,
20 from the tribe, the summary and the effort to date
21 to make it work. (Native American language.)

22 ROSITA WORL: Thank you very much.

23 **REVIEW COMMITTEE QUESTIONS AND DISCUSSION**

24 ROSITA WORL: Any committee members have any
25 questions or comments? Sonya?

1 SONYA ATALAY: Well, I want to start just by
2 thanking you for your presentation and just saying
3 that it's really nice to hear how a tribe can work
4 so closely with a Federal agency and a museum to
5 make this kind of work happen. That's really a
6 positive example. And I think the procedures that
7 you're developing, other tribes and Federal
8 agencies could find really very useful. So in
9 terms of that, I'm just wondering do you plan to
10 make the procedures – all of you at different
11 points have mentioned the processes and procedures
12 protocols that you've come up with. I just wonder
13 if you plan, will those be publically available,
14 and if so, how can other access those? That's my
15 first question.

16 ANNA BERG: I think that that's our goal, is to
17 make them accessible. We had talked about maybe
18 making them available on the museum's website. We
19 haven't discussed the details of that yet, but
20 that's definitely a goal to have it – to make it
21 useful so other people don't have to reinvent the
22 wheel.

23 SONYA ATALAY: And will that be the case for
24 all of them or just the museum? Will that be the
25 same for the Forest Service, the process?

1 PETER PILLES: Yes, that will be the integrated
2 process that we'll put together.

3 SONYA ATALAY: Okay. Oh, that's great. So
4 just a kind of clarification question, in terms of
5 – in terms of the site itself, you mentioned, I
6 know, and this number I realize could change, but
7 1,930 minimum number of individuals. As a point of
8 clarification, were those all disturbed on the
9 surface from looting or were those part of the six
10 years of fieldwork?

11 ARLEYN SIMON: The vast majority of them were
12 collected from the surface and also from excavating
13 exposed burials in the looter pits. A lot of the
14 work at the site involved site survey, and some
15 selected excavations in rooms and other features
16 that did not necessarily involve burials. So a
17 great majority of them were disturbed remains.

18 SONYA ATALAY: Could you maybe estimate a
19 percentage of those that were disturbed versus
20 those that were excavated as part of the fieldwork?

21 ARLEYN SIMON: Well, we will be coming up with
22 some concrete figures on that, but I would say
23 easily 60 percent of them were disturbed, if not
24 more.

25 SONYA ATALAY: And then just in terms of – you

1 mentioned that there are other repositories, not
2 the Museum of Northern Arizona, but other
3 repositories, and we've been talking a lot about
4 repositories in this meeting. And I just wonder if
5 since you have all these other great protocols and
6 practices you're developing, have you also
7 developed a process for working with repositories
8 or for identifying repositories that may have
9 collections, other collections and what that
10 process is?

11 PETER PILLES: That's been one of the functions
12 of Frank Wozniak, our regional coordinator. He's
13 the one who made the initial contact with the
14 various institutions based upon information that
15 forests provided him in terms of where we knew the
16 different collections were located. So he did that
17 first baseline work, and now that we enter into the
18 next stage, you know, I'll be contacting those
19 institutions directly, and again with the
20 assistance of the Hopi Tribe since many of them are
21 not related to NAGPRA procedures.

22 SONYA ATALAY: Thank you very much.

23 ROSITA WORL: Any further comments or
24 questions? Merv?

25 MERVIN WRIGHT, JR.: Yes, I too want to thank

1 you for sharing this story here, your effort, your
2 intent. I hope that other museums and other
3 agencies can see, you know, what it is that you
4 guys are doing in collaboration with the tribe.
5 You know, certainly, we need more of this type of
6 demonstrated intent. In many cases, when
7 universities, and I'll speak on that level of some
8 of the collections that universities are in control
9 of, they have transferred possession and control of
10 their entire collection because they believe it was
11 the right thing to do. However, there are other
12 institutions and agencies who don't feel that way.

13 I don't know what it's going to take, and even
14 though, you know, we engage in the discussion and
15 consultation and say that we have mutual respect,
16 we come to the table with an attitude of mutual
17 respect. But yet, you don't have the cooperation
18 and the eventual success of having that transfer of
19 control and possession done from one side to the
20 other. And I say that, you know, in the direction
21 of the institution, the agency to the tribe.

22 All of this is the result of a disrespectful,
23 blasphemous act by someone or somebody at some
24 point in the past that leads us to this point of
25 having to engage in this repatriation. And the

1 frustration and anguish that we tend to exhibit is
2 because somehow the demonstration on the other side
3 is that it's somehow our fault or it's somehow the
4 responsibility of our engagement is not good
5 enough, and that's what I think strikes at the
6 heart of I think a lot of tribes in trying to
7 acknowledge, you know, when people say there's
8 mutual respect there is not mutual respect.

9 Because when you see the respect from one culture
10 to another, appreciate it, acknowledge it, and I
11 think that's what we're seeing demonstrated by what
12 you guys are doing here with the tribes in Arizona.
13 So I want to say thank you.

14 ROSITA WORL: Thank you very much. We really
15 do appreciate the reports. Congratulations on the
16 great work that you're doing.

17 UNIDENTIFIED PRESENTER: Thank you.

18 SHERRY HUTT: Madam Chair, Kim Spurr has some
19 follow-up comments on the research study that she
20 has undertaken.

21 **PRESENTATION: NATIONAL NAGPRA TRAINING - A RESEARCH**
22 **STUDY**

23 **PRESENTATION**

24 KIMBERLY SPURR: Good morning, I think it's
25 still morning, Madam Chair and members of the

1 Committee. My name is Kimberly Spurr, and I am
2 representing the Museum of Northern Arizona in
3 Flagstaff. I'll be discussing today the museum's
4 cooperative agreement with the Park Service for
5 production of the National NAGPRA annual report for
6 2012.

7 As you know, the National NAGPRA Program
8 produces mid-year and annual reports that are
9 posted on the website and distributed to interested
10 parties. These data-intensive, unbiased reports
11 contain information on decisions of the NAGPRA
12 Review Committee, progress of NAGPRA compliance by
13 museums and Federal agencies, and status of tribal
14 repatriation efforts, as well as summaries and
15 commentary on national issues related to NAGPRA.

16 The Museum of Northern Arizona has signed a
17 cooperative agreement with the National Park
18 Service Washington office, to assist in production
19 of the 2012 annual report. In this capacity, the
20 museum will draft and format the 2012 report with
21 input and assistance from the National NAGPRA
22 staff. The report will be similar to previous
23 versions in organization and content, but will be
24 more descriptive and illustrative. We envision a
25 full-color, double-column format that will be

1 visually appealing and bring the report up to
2 current publishing standards. The museum will
3 uphold the scholarly neutral and unbiased data
4 presentation established by previous National
5 NAGPRA annual reports.

6 As part of the cooperative agreement, and with
7 funding from the National Park Service, the museum
8 is also conducting a focused study that will be
9 presented in the 2012 annual report. This study
10 will consist of a comprehensive summary and
11 interpretation of the National NAGPRA training
12 evaluations, a report that was requested by the
13 Review Committee recently. Each year, National
14 NAGPRA coordinates and sponsors a variety of
15 training programs. The longest running of these is
16 the NAGPRA basics course, which was most recently
17 offered this past Tuesday. This one-day course is
18 designed to familiarize people involved in NAGPRA
19 compliance programs with the legislation and its
20 implementation.

21 National NAGPRA has provided the museum with
22 basics course evaluations for 15 training sessions
23 dating back to 2005. We have evaluations from 395
24 respondents who took this course. National NAGPRA
25 realizes that the evaluation forms submitted by

1 participants in these courses offer valuable
2 information to judge the efficacy and relevance of
3 the course curriculum. A detailed perusal of the
4 evaluations and comments provided by the
5 participants will allow a critical review of the
6 program that can be used to improve curriculum and
7 ensure that the courses remain useful and relevant
8 to individuals currently enmeshed in the NAGPRA
9 process.

10 Other training programs for which the museum
11 has evaluations are the two-day symposium *NAGPRA at*
12 *20* held in 2010 and three courses that are offered
13 in partnership with the National Preservation
14 Institute. For the *NAGPRA at 20* symposium, we have
15 summary evaluations from 41 respondents, excuse me,
16 and from 25 respondents, we also have written
17 comments on the – strengthening the purpose of
18 NAGPRA, exploring ways to increase accountability
19 session.

20 The National Preservation Institute courses
21 are on Writing and Managing a Successful Grant,
22 Determining Cultural Affiliation, and Summaries,
23 Inventories, Notices and Database. For these three
24 courses, we have evaluations from 178 respondents
25 who took 11 training sessions between 2009 and

1 2011.

2 In sum, we have evaluations from 639
3 respondents obtained during 27 training sessions
4 dating back to 2005. We also hope to get
5 evaluations from the more recent webinar courses
6 that National NAGPRA and the National Preservation
7 Institute have offered and compare how these
8 virtual programs, how effective they are in
9 relation to the face-to-face trainings.

10 In brief, the museum intends to input the
11 quantitative and scaled evaluation data, first into
12 a database and then into a statistics program and
13 identify and characterize trends and patterns in
14 this evaluation data. Using appropriate graphs and
15 tables, we hope to present a detailed summary of
16 the evaluation. Targeted inclusion of written
17 comments and suggestions from course participants
18 will offer the course organizers and instructors
19 specific information that can improve the
20 curriculum and ensure that it remains fully
21 relevant.

22 Our staff at the museum is excited about this
23 collaboration with National NAGPRA, and we look
24 forward to getting feedback from the users of the
25 annual report on the new format. We also welcome

1 any comments from the Review Committee on specific
2 topics that they'd like to – that you'd like to see
3 us include that I have not already covered. Thank
4 you.

5 ROSITA WORL: Thank you.

6 **REVIEW COMMITTEE QUESTIONS AND DISCUSSION**

7 ROSITA WORL: Do we have any questions or
8 comments? Merv.

9 MERVIN WRIGHT, JR.: Yes, thank you. The
10 basics training is good, you know. It does present
11 that general overview, but one thing that – and I
12 don't know if it's captured in the evaluations, but
13 one thing that needs to be described through the
14 trainings is the fact that burial collections,
15 including human remains, are considered cultural
16 items. And therefore when the principles of
17 ownership through control and possession are
18 applied, it allows for those to be treated as
19 property, and I know that property law is a big
20 part of the training. And so I think it would be
21 very important for tribes to hear that human
22 remains can be treated as owned property. And we
23 use terms like "control" and "possession" that
24 describe it. And so I think it would be important,
25 you know, when you complete your report, and again

1 if you review the evaluations to see that those
2 types of acknowledgements are portrayed in the
3 evaluations, it would be important for that to be
4 noted.

5 KIMBERLY SPURR: Okay. Thank you.

6 ROSITA WORL: Okay. Any further comments,
7 questions?

8 SHERRY HUTT: Madam Chair, if I might, the
9 Review Committee had requested a study of training,
10 and we felt it would be better if it was done
11 outside of the program, rather than in, for the
12 bias factor. And so Kim makes requests of the
13 program for the content, the demographics, and the
14 evaluations. So we give her everything that we
15 have, and that's the - and we do around 25
16 trainings a year. And so we've just poured it all
17 on poor Kim and asked her to design this study that
18 will best meet what you're looking for and will
19 give insight, really unbiased, external insight to
20 us in how we communicate and how we do training and
21 how we serve the various NAGPRA communities. So we
22 appreciate the assignment that was given.

23 ROSITA WORL: Thank you very much.

24 KIMBERLY SPURR: Thank you.

25 ROSITA WORL: I just have one follow-up

1 question. Insofar as when you go out for
2 contracts, how do you do that?

3 SHERRY HUTT: And Museum of Northern Arizona?
4 The —

5 ROSITA WORL: Just in general.

6 SHERRY HUTT: Yes, in general, what happens
7 when we do contracts is the Department, the Park
8 Service and the Department has an office of — an
9 accounting office. It's actually located in
10 Denver. And so we put the money in the electronic
11 stream, and then they — and we have a scope of
12 work. I write the scope of work, and then they put
13 it out for bid and then it comes back. I had not
14 chosen the museum — wasn't directed toward the
15 Museum of Northern Arizona. I think in reporting
16 this to you at the last meeting when I told you
17 that they had been chosen, I gave you the
18 disclaimer —

19 ROSITA WORL: I wasn't speaking of them in
20 particular, just a general process.

21 SHERRY HUTT: Right, but for all contracts, and
22 you hear the word "cooperative agreement," I'm not
23 sure that we've really used cooperative agreement
24 in recent history because the way the accounting
25 office looks at it, they treat everything like a

1 contract and they go out to bid. And so it really
2 – it's not program choice, but we've been really
3 tickled with what we've gotten in response.

4 ROSITA WORL: Thanks. I think we have one
5 further agenda item, a public comment from –

6 SHERRY HUTT: Yes, we do, a presentation from
7 Patricia Capone, Peabody Museum of Archaeology and
8 Ethnography, Harvard University.

9 ROSITA WORL: Welcome. It's always good to see
10 you.

11 **PRESENTATION: PEABODY MUSEUM OF ARCHAEOLOGY AND**
12 **ETHNOLOGY, HARVARD UNIVERSITY**

13 **PRESENTATION**

14 PATRICIA CAPONE: Thank you. It's good to see
15 you all, too. I'm Patricia Capone, Associate
16 Curator, and I serve as Repatriation Coordinator at
17 the Peabody Museum of Archaeology and Ethnology,
18 Harvard University. And I would like to pass the
19 mic over my colleagues here to introduce
20 themselves.

21 EMILY PIERCE: My name is Emily Pierce, and I'm
22 a Curatorial Assistant at the Peabody.

23 DIANA LOREN: I'm Diana Loren. I'm Associate
24 Curator at the Peabody Museum.

25 PATRICIA CAPONE: Thank you for the opportunity

1 to present an update on our implementation once
2 again.

3 As you know, the Peabody Museum has committed
4 significant resources, expertise and attention over
5 many years in a good faith effort to implement
6 NAGPRA and to cultivate the respectful
7 relationships necessary to this effort. The museum
8 has partnered with Native American communities and
9 other institutions across the United States to work
10 toward successfully achieving, excuse me, mutual
11 goals of education and research. Our museum
12 considers the experience to be a privilege. The
13 process has benefited each of our missions of
14 education, research and developing relationships
15 with indigenous people, communities and scholars –
16 indigenous communities and scholars.

17 The Peabody Museum is responsible for NAGPRA
18 implementation for one of the largest and broadest
19 collections subject to the Act. We consult on
20 human remains and funerary objects from nearly
21 every state. Our museum already has completed
22 requirements to enable repatriation of
23 approximately 3,137 individual human remains and
24 over 10,000 funerary objects. This represents
25 approximately 13 percent of the total number of

1 human remains and funerary objects that are
2 available for repatriation nationally. Of these
3 culturally affiliated collections, physical
4 repatriation has been completed for the following:
5 2,934 individual human remains, 3,886 funerary
6 objects, 1 sacred object, 73 objects of cultural
7 patrimony, and 18 objects that are both sacred
8 objects and objects of cultural patrimony.

9 Consultations with Native American tribes take
10 several forms; visits to the museum,
11 correspondence, web consultation through the museum
12 collections database online, and arrangements for
13 physical repatriations. The museum continues to
14 utilize its collections website as a means of
15 presenting collections for NAGPRA consultation and
16 are currently making some updates to that.
17 Currently there are 37 web lists on the Peabody's
18 website for consultation with Native American
19 tribes.

20 Since the last NAGPRA Review Committee meeting
21 in November, the Peabody welcomed or traveled to
22 four different NAGPRA consultation visits. The
23 museum continues to consult with numerous tribes on
24 possible sacred objects and objects of cultural
25 patrimony, and we anticipate that physical

1 repatriations of these cultural items will take
2 place this year.

3 Physical repatriation events continue to take
4 place – continued to take place during the past
5 year and there's another set for next month. Since
6 the last meeting of the Review Committee, one new
7 *Federal Register* notice was published, which
8 enabled the repatriation of two individual human
9 remains.

10 And to refer to your discussions yesterday and
11 today regarding Federal agencies, we compiled some
12 information relating to Federal agency collections
13 that are under the control, excuse me, of Federal
14 agencies at the Peabody Museum as a non-Federal
15 repository. We contacted Federal agencies as part
16 of the inventory process when we were compiling
17 inventories for the various deadlines in NAGPRA,
18 and occasionally were contacted by the Federal
19 agencies when they realized that collections
20 controlled by them were at the Peabody Museum that
21 we didn't have documentation for their relationship
22 to.

23 The total number of human remains at the
24 Peabody Museum that relate to the Federal agencies
25 are approximately 360 individuals, and all but

1 about 175 have been inventoried and acknowledged
2 control over. The number that have been published
3 in *Federal Registers* are about 150 individuals, and
4 all but 36 of those individuals have been
5 physically repatriated, including individuals that
6 were part of the exemplary project that we just
7 heard about earlier. So those are some bits of
8 information about work with Federal agencies.

9 The Peabody began implementing new NAGPRA
10 regulations for Section 10.11, the final rule,
11 disposition on culturally unidentifiable human
12 remains, which became effective in 2010. The
13 museum allocated resources for new staff to join
14 the museum, including Emily, toward implementing
15 NAGPRA in partial response to these added
16 requirements. And in Fiscal Year 2010, the museum
17 initiated consultations upon request with six
18 tribes under the new regulations, and since last
19 July this number has almost tripled. The museum
20 received a two-year NAGPRA consultation grant to
21 implement the new regulations for culturally
22 unidentifiable human remains from Eastern
23 Massachusetts, and we have applied for another
24 consultation grant for Fiscal Year 2012 for another
25 area.

1 The museum continues to be concerned about
2 several aspects of the regulation for 10.11. There
3 are poorly defined limited to the discussions that
4 must take place and the parties who must take place
5 in the discussions. The cost of conducting these
6 large-scale and open-ended discussions is not yet
7 clear but has potential to be great. We also
8 believe the time for implementing this process has
9 been underestimated. All of the factors described
10 above are likely to contribute to an atmosphere of
11 delay and expense for tribes and institutions.

12 It is important that a process be well
13 structured and well defined, and we advocate for
14 increases in the NAGPRA grants program and the
15 grants program administration. We think those are
16 warranted to support the additional requirements of
17 this new regulation.

18 If substantive changes to any NAGPRA
19 regulations are under consideration, we hope that
20 our current and past NAGPRA efforts will be taken
21 into consideration and that we will have a full
22 opportunity to comment and participate in any
23 review.

24 Regarding the March 2nd, 2012, *Federal*
25 *Register* notice relating to NAGPRA's information

1 collection, in our experience the activities
2 referenced in this notice do not capture even a
3 small percentage of our compliance activities. The
4 time estimates and staff costs presented in this
5 table are not representative of the information
6 collection costs to museums. In our view the time
7 and effort required for information collection
8 requires substantially greater resources than the
9 estimate in the *Federal Register*. Further, we
10 believe that reckoning the cost of NAGPRA
11 implementation should be conceived of more broadly.
12 Consultation, curation agreements for collections
13 prior to repatriation, and physical repatriations
14 are several of the important NAGPRA activities,
15 which require considerable resources and are not
16 represented by information collection.

17 The Peabody continues to refine policies and
18 procedures for sensitive collections and to strive
19 for improved approaches to expanding accessibility
20 to Native American communities, whether through
21 NAGPRA or other means. Additionally, as a
22 university museum, the Peabody responds to frequent
23 informational inquiries from students and other
24 interested parties. Again, this year the museum is
25 partnering with the Harvard University Native

1 American Program and local Native American
2 communities to continue our excavations and
3 research on the Harvard Indian College of 1655 and
4 the history of Native American education at
5 Harvard.

6 Additionally this year, we dedicated
7 significant public exhibit space to a project which
8 grew from a NAGPRA consultation. The project
9 features a visible workspace for collaborative
10 conservation of watercraft collections from Alaska,
11 with Alaska Native consultants and the museum.

12 At the Peabody Museum, we are grateful for the
13 relationships we have developed that so broadly
14 benefited the museum and we look forward to new
15 ways of understanding through the NAGPRA process.
16 And I'd be glad to provide an electronic copy to
17 you if you're interested.

18 ROSITA WORL: Okay. Thank you.

19 **REVIEW COMMITTEE QUESTIONS AND DISCUSSION**

20 ROSITA WORL: Do we have any questions or
21 comments?

22 Well, thank you again for being here. Did we
23 have a comment or a question?

24 ALEXANDER BARKER: Just a clarification. You
25 said that the *Federal Register* notice from March

1 2nd didn't adequately capture the time necessary to
2 fully implement NAGPRA.

3 PATRICIA CAPONE: Yes.

4 ALEXANDER BARKER: Do you mean it slightly
5 underrepresented it, or could you – could you put
6 that into a perspective of to what degree did it
7 not categorize it.

8 PATRICIA CAPONE: To what degree did it not
9 categorize it, I think to a significant degree. I
10 think information collection – there are sort of
11 two pieces to this. One is the notion of
12 information collection as a representative notion
13 of understanding the work involved in NAGPRA and
14 all the attention the various stages deserve.
15 Information collection is a small piece of that.
16 The second aspect of the notice is whether or not
17 the estimates for information collection itself
18 seemed accurate to us, and our opinion is that
19 there is considerably more time involved in
20 information collection. Does that clarify?

21 ALEXANDER BARKER: Yes, it does. Thank you.

22 ROSITA WORL: Any further comments, questions?

23 Well, again, thank you. We really do
24 appreciate, you know, your regular and ongoing
25 visits with the Review Committee.

1 PATRICIA CAPONE: Thank you all.

2 ROSITA WORL: Thank you.

3 Well, we are at noon and I think we're ready
4 for our lunch break. And we will reconvene at
5 1:30, so the Review Committee is in recess until
6 1:30.

7 **LUNCH**

8 ROSITA WORL: We will now call the Review
9 Committee back into order, and our first agenda
10 item is the discussion and review of the Review
11 Committee's Dispute Procedures and Findings
12 Procedures. And we'll ask Sonya, who is the Chair
13 of this subcommittee, to go ahead with that report.

14 SONYA ATALAY: Sorry, I just ran back from
15 lunch, so I'm out of breath. I'll catch my breath
16 in a minute. Well, the first thing I'll -

17 ROSITA WORL: We could review the letter if
18 you want to take a few moments.

19 SONYA ATALAY: That would be great, thank you.

20 **DISCUSSION: REVIEW COMMITTEE'S POSITION ON THE**
21 **PROPOSED REDEFINITION OF "NATIVE AMERICAN" FOR**
22 **PURPOSES OF NAGPRA**

23 ROSITA WORL: I think let's just go ahead and
24 do the letter. We had a discussion yesterday where
25 we felt - the Review Committee members were feeling

1 that we needed to respectfully request the
2 Secretary to engage the Review Committee whenever
3 NAGPRA issues arise. And so we had one of our –
4 one of our Review Committee members had drafted a
5 letter that we should review and look at now. We
6 wanted to also, whenever there was a hearing on
7 NAGPRA in Congress, we felt also that the Review
8 Committee should be invited. We're – it's a very
9 delicate issue to say to Congress, you should
10 advise the advisory body that you established to
11 deal with NAGPRA issues. So we are proposing to
12 send a letter.

13 Go ahead, Alex. I'll let you take the lead on
14 this.

15 ALEXANDER BARKER: Thank you, Madam Chair.

16 ROSITA WORL: Oh, Alex, if you could speak more
17 closely into your mic.

18 ALEXANDER BARKER: Thank you, Madam Chair. I
19 have circulated a quick draft of a letter that
20 could go to the Secretary, which was circulated to
21 members of the Review Committee this morning. It's
22 up on the screen for the audience. And Chairman
23 Worl had suggested that we might also want to add a
24 brief statement, something to the effect of, We
25 would also respectfully request that the Secretary

1 use his good offices to encourage that Review
2 Committee members are invited to House and Senate
3 Congressional hearings regarding NAGPRA and related
4 topics. Is that – does that capture the spirit of
5 what you were suggesting, Madam Chair?

6 ROSITA WORL: I think we wanted specific
7 language insofar as when there was a – when
8 Congress was convening a hearing on NAGPRA that the
9 Review Committee be invited to participate, and if
10 the Secretary would convey that to, you know, the
11 appropriate committee holding the hearing.

12 MERVIN WRIGHT, JR.: Madam Chair?

13 ROSITA WORL: Yes.

14 MERVIN WRIGHT, JR.: I would – I would follow
15 and concur with that, because the way I'm reading
16 this letter – I mean, it is after the fact and I
17 think we should probably try to formulate it more
18 of a formal engagement with the Secretary's Office
19 on, you know, specific NAGPRA related issues. And
20 we might want to include this as part of an example
21 that we would like to state, you know, but I think
22 that if we're going to focus specifically on the
23 position of the Administration with regard to the
24 definition, I'm not sure it would have any meaning
25 or result.

1 ROSITA WORL: So I mean, what we're trying -
2 you know, I guess the question I hear is do we need
3 to reference, you know, the past action of the
4 Secretary where we were not engaged. But just as a
5 positive statement to the effect that the NAGPRA
6 Committee was established by Congress and that we
7 would request that the Secretary - simply request
8 that the Secretary engage the committee on any
9 issues or events in which NAGPRA would be discussed
10 and at least seek our input on it without reference
11 to the past event.

12 ALEXANDER BARKER: Madam Chair, for what it's
13 worth, I think my concern would be if we don't
14 reference the past event, I suspect such a letter
15 would have the - would receive the response, "Of
16 course, we always do." What I've - I've also
17 suggested some wording that may address what you
18 were talking about. It's being added right now,
19 and I apologize if there are any errors. They're
20 mine and based on how badly I write.

21 "Use his good offices," I think.

22 ROSITA WORL: That's good. That part looks
23 good. Yes. Okay, now let's take care of your -
24 what did you - let's go back to the first part of
25 the letter.

1 My sense is that we should, you know, state it
2 in the positive and then just say, for example, in
3 this – very recently there was this action in which
4 we were not involved. But if we could start it off
5 at least in a positive reference. So I would say,
6 The NAGPRA Review Committee respectfully requests
7 that the Secretary engage the Review Committee and
8 seek its position on issues relating to NAGPRA. We
9 understand that in the past, you know, the
10 Secretary was involved to comment, and in this
11 situation the Review Committee was not – its input
12 was not sought or obtained. Like that?

13 ALEXANDER BARKER: Thank you.

14 ROSITA WORL: Just trying to be politicians
15 here.

16 MERVIN WRIGHT, JR.: Right. Well – yes, I
17 think it's important that, you know, we capture
18 what Alec's concern is here with regard to the
19 release of the Administration's position on the
20 definition. And as a committee, you know, we just
21 want – we also want to grab their attention. We
22 want to make sure that they recognize that, you
23 know, we see it as a potential oversight on their
24 part for not including Review Committee in
25 consultation. But at the same time I guess the

1 question would be to, you know, our counsel, where
2 is that obligation of the Secretary to engage the
3 Committee on matters such as this position they
4 issued on the definition.

5 ROSITA WORL: Just for clarity – just for
6 clarity now, we have two issues – two issues that
7 we’re dealing with. One is the engagement of the
8 Review Committee, the Secretary engaging the Review
9 Committee and us, you know, reacting or working
10 with the Secretary. Also, in discussion, we will
11 be discussing the definition. So we have two
12 separate issues. But in this instance, we are just
13 referencing – we are referencing an action. But we
14 want to be able to state clearly the Review
15 Committee position.

16 SHERRY HUTT: And I was just – while you were
17 initially asking that question, I was –

18 ROSITA WORL: But we have a question to
19 counsel, yes, about the obligation.

20 SHERRY HUTT: Yes, about how we’re going to do
21 this.

22 ROSITA WORL: Let’s just answer the first
23 question, first, is the Secretary legally required
24 to consult with us?

25 CARLA MATTIX: On these types of matters –

1 ROSITA WORL: I think – is your mic on?

2 CARLA MATTIX: Hello. I mean, it depends on
3 the situation, and generally the duties of the
4 Review Committee – our specific duties are laid out
5 in Section 8 of the statute, so you can refer back
6 to that and see what the specific duties are.

7 For the issue that brings us to this
8 discussion, there was an incoming Congressional
9 question regarding the interpretation or amending
10 of the statute. That is not a delineated
11 responsibility of the Review Committee. That was a
12 question coming into the Department of Interior and
13 asking for the Department's views. Now, under the
14 section for the Review Committee responsibilities,
15 it says that the Secretary "may ask the Committee
16 to perform such other functions as the Secretary
17 may assign to the Committee." So it's certainly
18 within the Secretary's discretion to ask your
19 opinion on these types of matters but it's not a
20 legal obligation.

21 ROSITA WORL: Okay. I think that answers the
22 question, but in this case we are just respectfully
23 requesting that he does seek our counsel, which I
24 think is proper.

25 So Alex is busy wordsmithing. And you –

1 should we hold this in abeyance now? Are you ready
2 to proceed, because we could do that?

3 Alex, do you want – so you could have the time
4 to write that as we go through this other agenda
5 item.

6 ALEXANDER BARKER: Sure.

7 ROSITA WORL: All right?

8 SONYA ATALAY: Okay.

9 ROSITA WORL: If that's okay with the
10 committee, we'll do that and give Alex some time to
11 write a great letter for us.

12 SHERRY HUTT: While he's doing that, if I might
13 talk about process, could I ask you about process,
14 how you envision this being delivered? Is that
15 what you're –

16 ROSITA WORL: No, okay, wait. Let's just –
17 we'll hold that for right now. Let's – we'll let
18 him write it, and we'll talk about that afterwards.
19 Let's go to Sonya, who has now caught her breath
20 and is raring to go.

21 **ACTION ITEM: DISCUSSION AND REVIEW OF THE REVIEW**

22 **COMMITTEE'S DISPUTE PROCEDURES & FINDINGS**

23 **PROCEDURES**

24 SONYA ATALAY: Yes. Okay, thank you, Madam
25 Chair, and thanks for your patience with the high

1 altitude here that I'm having catching my breath.
2 What I'll be reporting on is that we've had a
3 subcommittee that has been working on trying to
4 revise - consider and revise the dispute
5 procedures. Our goal has been to clarify the
6 dispute procedures, to simplify the language, and
7 to provide a clear and fair process.

8 So the work that's been done since the last
9 meeting is - the three of us, the subcommittee was
10 Eric Hemenway, Rosita Worl and myself. What we've
11 done is go back and look at the dispute procedures
12 as they were from September of 2006 and all the
13 other documents that relate to that. There was
14 also a Form B and the DFO's questions to
15 disputants, there was in the last dispute some of
16 those questions that were formulated. So we kind
17 of just reviewed all of these materials and went
18 through and made changes, particularly Rosita Worl
19 and Eric Hemenway, who had been involved and on the
20 ground with disputes. They had a - the majority of
21 the input on creating a new document.

22 So primarily, I think I will turn it over and
23 ask Eric to talk about some of why some of the
24 changes are in here and what we were trying to
25 achieve. But what I will say before doing that is

1 just that what we hope to do or what we're thinking
2 this document needs is that it's in no way thought
3 of as a complete and ready-to-go document. We know
4 that we want a lot of input, particularly from
5 those who have been involved in disputes, tribes,
6 Federal agencies, museums – tribes and museums who
7 have been involved, we really do want to hear from
8 you, and others as well. We want to make this a
9 very useful document. So we're hoping that there
10 will be a lot of further work done on this, but we
11 did just want to update you and talk about some of
12 the things that we are trying to achieve with the
13 changes that were made. So maybe at this point
14 I'll kind of turn it over to you, Eric, to talk a
15 little bit about some of the changes that are in
16 there and why.

17 ERIC HEMENWAY: Thank you, Sonya. In going
18 through these procedures, we wanted to simplify the
19 process as much as possible and bring recognition
20 to what the dispute really is, and that is at times
21 can be a very contentious, tension-filled event
22 that has gone on, for many times, many years. So –
23 and our hope to go through these procedures again
24 is to bring to light other procedures that would
25 help alleviate some of these tensions and the best-

1 case scenario have the issue resolved without it
2 ever coming before the Review Committee.

3 And so one of those is a consultation process
4 between the DFO, the Chair and the interested
5 parties, we are strongly advocating that this
6 process be brought forth more in dispute procedures
7 that whenever these parties are engaged in a
8 potential dispute that they at least have an
9 opportunity to be at the table at the same time.
10 And in going through a dispute myself for my tribe,
11 we never had that opportunity. It went straight to
12 a dispute. So maybe if we had that opportunity to
13 talk with the museum and have somebody help mediate
14 the conversation, because many times by the time
15 the museum and tribe get to the point of having a
16 dispute there's so much tension that it's hard to
17 think clearly on what's the actual issue. So
18 having somebody else that is not so intimately
19 involved in the dispute and present other options
20 might be of a great help to museums and tribes.

21 So that was one of the things we wanted to
22 bring to light, another one to help clarify the
23 process is the elimination of the Form B. This
24 Form B is something that was recently created for
25 dispute procedures and it – Sonya has a copy of it,

1 and it has – there was certain questions. Form B
2 reads, "Request by a Disputing Party That the
3 Review Committee Convene Parties and Facilitate a
4 Dispute Related to the Return of Cultural Items."
5 So there's all these stipulations that have to be
6 met for a dispute, and it just – it creates a
7 little bit more confusion when you're going through
8 reading these.

9 And something else that creates a little bit
10 more confusion is the questions that were provided
11 at the dispute in November 2010. So these
12 questions were given to the Review Committee as
13 part of our packet, and to our knowledge these
14 questions were never included in previous disputes.
15 So it – through – at the time of the meeting, we
16 had to go through and work through these questions.
17 And it created quite a bit of confusion at the time
18 of the meeting. So we're asking that those be also
19 taken out of the procedures.

20 And other thing that we're looking at with the
21 dispute procedures is more clarification on the
22 requests of Finding of Fact. So that when you go
23 to the website, and you're getting to the stage of
24 preparing a dispute and you see this Finding of
25 Fact, it creates a little bit more confusion on

1 exactly is this, you know, a mandatory step for a
2 dispute, is it so -

3 SHERRY HUTT: Could I ask a question?

4 ERIC HEMENWAY: Yes.

5 SHERRY HUTT: What that is on the website,
6 there are forms for making a request for a Finding
7 of Fact, forms for a dispute. Those were created
8 at the request of the Review Committee, and I
9 thought approved by the Review Committee or
10 reviewed by the Review Committee. Those are forms
11 that we put up on the website to aid folk. If you
12 want us to take those down and replace it with
13 something else, that's a given; we'll do that, so
14 have at it. But I just want to say, that's where
15 those came from was a response to the Review
16 Committee that you wanted some consistency in the
17 format by which things were presented to you, and
18 there were several meetings where you said give us
19 a checklist, you know, give us something that
20 disputants can fill in the blanks and know that it
21 assists them in preparation. So taking off - yes,
22 to help focus the issue.

23 So taking off my DFO or manager hat or
24 whatever I'm wearing, that's a given. We will - we
25 can take those down and replace them or put them as

1 part of the dispute – that's open. That's a given.
2 All right?

3 SONYA ATALAY: Okay. Well, let me finish up
4 with – Eric, are you done presenting? And if
5 that's okay, Mervin, then I'll – or do you want to
6 respond to Sherry?

7 MERVIN WRIGHT, JR.: (Comment inaudible.)

8 SONYA ATALAY: Go ahead, Mervin. Go ahead and
9 ask your question.

10 MERVIN WRIGHT, JR.: Right where Eric was
11 describing when a party is looking at the potential
12 for a dispute and trying to make a determination
13 for themselves whether they have a dispute, and I
14 know that the disputes that I've been involved with
15 here on the committee were about whether or not a
16 museum had a right of possession. And so in
17 looking at that, that particular issue of right of
18 possession, is that the only criteria, the only
19 condition that would lead to a dispute? And I know
20 there was another one where an item changed status,
21 so I would just – I guess my question even – well,
22 I guess it's just – maybe both Eric and you,
23 Sherry, can comment on it, that somewhere maybe to
24 help a party to determine whether they have a
25 dispute to list some criteria or something to that

1 effect.

2 SHERRY HUTT: Knowing whether you have a
3 dispute and having some guidance, you know, that's
4 a question we get a lot. Am I at the dispute
5 phase? And we, of course, are involved in getting
6 the parties together to resolve things. Many
7 disputes don't happen because they get resolved
8 before they get to you, but just giving you
9 feedback from what we get in the program, Mervin's
10 point is very well taken because "Do I have a
11 dispute?" and "Is it a (c) (3) or is it a (c) (4)?"
12 Do I have an actual dispute or is there something
13 less adversarial, am I asking for factual
14 determinations that will assist us. So often I
15 hear from people who have brought disputes, I
16 wanted more from the Review Committee. I wanted
17 assistance in how I might have resolved, and I
18 wanted some sort of factual input.

19 So what you're saying is you want to give some
20 kind of idea of when parties have a dispute and
21 whether it's a dispute or a finding of fact, what
22 you might be able to do, and what they need to know
23 to bring it to you, and how to decide whether it's
24 a (c) 3 or a (c) (4). And let me just say in the
25 overview, once you discuss all the — and you give

1 it to us, Carla and Stephen will go over it for a
2 legal analysis. So we don't need to get too
3 involved in all the law part today. But you're
4 giving us ways that you want to help people bring
5 these disputes better and communicate better,
6 right? So that would be part of that, of Marvin's
7 comment, I think.

8 SONYA ATALAY: Rosita.

9 ROSITA WORL: Madam Chair, my understanding is
10 that our disputes – and I think most tribes and
11 museums are familiar with the terms of first of
12 all, are we a tribe, do we have a right, you know,
13 to bring a dispute as a tribe, are we a federally
14 recognized tribe, that's the first one. The second
15 one, is there cultural – well, first of all, the
16 definition, I mean, is an object a sacred object?
17 You know, you may have a dispute about is an object
18 a sacred object or is it not. You may have a
19 dispute about whether an object is an object of
20 cultural patrimony or not. Have you met the
21 standards to show that it is an object of cultural
22 patrimony? You may have a dispute about, as Merv
23 said, the right of possession. Does the tribe have
24 the right of possession? So you may have disputes
25 around those areas. You may have disputes about,

1 you know, the cultural affiliation with ancestors,
2 human remains, and the funerary objects, associated
3 or unassociated funerary objects.

4 So I think what the committee was trying to do
5 was to go back to the law itself, and it says where
6 the committee has the responsibility of
7 facilitating disputes and then we go back, you
8 know, to the law itself. And so that was what was
9 — we were attempting to do in the procedures
10 itself, which was the first intent of the
11 procedures was really to say, okay, have I
12 responded to this, responded to this. Because what
13 we found before was that tribes were not coming
14 with all of the material and they would spend the
15 money coming to the Review Committee meeting and
16 not have the material, so we were trying to
17 simplify it.

18 But in trying to simplify it and give as much
19 information, I think we made it more complex by
20 adding all of these other, you know, Form Bs and
21 questions and things like that. So we wanted to go
22 right back to where we were before, but with this
23 structure of outlining are we a tribe, do we have
24 cultural affiliation, is it a sacred object, is it
25 an object of cultural patrimony, and have we met

1 the right of possession. And I think there was one
2 other dispute area, when there were competing
3 claims? Yes, I think competing claims. So we went
4 right just back to that.

5 SONYA ATALAY: Carla.

6 CARLA MATTIX: Also just following up on
7 Rosita's comment on kind of the history and the
8 development of this, you know, this has been an
9 evolving process, and I've been with the committee
10 since 1996. So we learn from each dispute and, you
11 know, what some of the – just the procedural
12 obstacles are, and try to do things, like these
13 procedures, to help the people coming before the
14 committee.

15 My recollection is, you know, when I first
16 started, everything was just called a dispute,
17 generally, and we didn't have this distinction
18 between (c)(3) and (c)(4) drawn as brightly, even
19 though it is set out like that in the statute. The
20 (c)(3) deals with findings and recommendations, and
21 the (c)(4) talks about the responsibility to
22 facilitate disputes. So you know, in trying to
23 think about not having everything rise to the level
24 of a dispute, which can sometimes be very tenacious
25 and aggressive, we tried to focus on this (c)(3)

1 provision where if the parties do just need some
2 additional assistance with some factual findings,
3 that they could bring that before the committee
4 without labeling it as a dispute. So that's when
5 we started to try to distinguish between the two.

6 And now perhaps things have gotten too
7 formulated and just, you know, just to try to think
8 about what is the easiest for everybody to
9 understand and how to craft this most efficiently.

10 MERVIN WRIGHT, JR.: (Comment inaudible.)

11 SONYA ATALAY: Well, I would like to ask if any
12 other members of the Review Committee have any
13 other comments. I'm happy to — Alex.

14 ALEXANDER BARKER: We had spoken about this
15 earlier, and I think it's something that the
16 subcommittee is interested in already, but I just
17 wanted to raise it as a possibility, would be to
18 have the draft that you're working on made
19 available to parties to previous disputes to see
20 whether or not these revisions would have helped
21 those processes, since they have first-hand
22 experience over them.

23 And the other thing I'd like to suggest just
24 in passing, the goal of the committee isn't to
25 resolve disputes; it's to not have disputes occur

1 in the first place. Ideally, things should be
2 taken care of before they get to the dispute level.
3 And one of the things that's mentioned here that I
4 think is very important is that in consultation
5 with the DFO and with the Chair of the Committee,
6 many disputes may be resolved before they come to
7 the Committee, which is a very positive thing. But
8 is that information captured, the number of – if
9 something comes to the Committee it becomes
10 captured as a dispute that's been resolved, but if
11 we can avoid that, which is our ultimate goal, I
12 think, so much the better. Do we capture that
13 information in any way?

14 SHERRY HUTT: We don't. It's the most
15 satisfying part of what I do. In our program when
16 we have sat around the table with both sides on the
17 other end of the telephone and given them like a
18 mini training. We do not act in the position of a
19 mediator. We might refer people to folks who could
20 act in that capacity, but we're very cognizant of
21 the fact that the National NAGPRA Program gives
22 technical advice, and we are not – we are not
23 invading the Review Committee's role, and we are
24 not giving legal advice. But we have, on many
25 satisfying occasions, sat across the folk or the

1 telephone from parties who are ready to bring a
2 dispute and just basically went through the
3 process. And those moments where the parties just
4 look at each other and go, we could do that, that's
5 what makes my staff work 80 hours a week, you know.

6 I mean, those — but we don't capture those in
7 numbers. And I don't know, just because of the
8 sensitive nature of that, how we would. And it's
9 very subjective, because we do that so much. I
10 mean, I don't know so much formally, but it's just
11 such a constant thing. You get a call from someone
12 that says I'm ready to file a dispute because so-
13 and-so won't talk to me. And then you get the
14 other party on the phone together, and you just
15 effectuate communication, and then you never see a
16 dispute.

17 But if you're looking for, is there some way
18 short of actually coming to the committee, we have
19 to be very careful of our roles, as I said, in the
20 program. And as somebody used the term yesterday,
21 the NAGPRA field or the NAGPRA professionals, they
22 might be used as mediators to bring people
23 together. We do about as much as we can within our
24 position in the law. I don't think we could do
25 more.

1 The question I have for you all is if the
2 Review Committee Chair, whoever that was, was a
3 party to this predecisional, predispute negotiation
4 or mediation or dispute resolution or whatever you
5 call it, then if it came to the Review Committee
6 would the Chair then recuse themselves. You know,
7 that's the situation that you would get into. So I
8 would be cautious about involving the Review
9 Committee in matters prior to coming to the Review
10 Committee, just to maintain your distance and
11 dispassionate neutrality.

12 SONYA ATALAY: Alex.

13 ALEXANDER BARKER: And I ask because in section
14 A of the proposed procedures, that prediscussion is
15 in concert with the DFO and the Chair of the
16 Committee. That's why I was wondering if there was
17 a way to capturing it just so the Review Committee
18 knows that this number of disputes never even came
19 to us because they were amicably resolved by the
20 parties concerned.

21 SHERRY HUTT: Yes, that raises the flag of
22 conflict of interest. It really does. It screams
23 that out.

24 Now, under the prior procedures you had, the
25 DFO consults with the Chair to determine if this is

1 a matter that will be heard by the Review
2 Committee, time, whatever, and so it's – you know,
3 we don't just schedule it as a ministerial matter.
4 It is a consultative situation between the DFO and
5 the Chair, but not a substantive, into the dispute
6 facts with the parties to that. That, I fear,
7 would compromise both the DFO and the Review
8 Committee with regard to that very precious
9 neutrality that we must all enter into the dispute
10 path with.

11 ROSITA WORL: Any other comments from the
12 Review Committee? Cissy.

13 LINDALEE FARM: My question is procedurally how
14 we're going to handle this. Are we going to go
15 through the draft? Are we going to seek the input
16 of counsel and the DFO with the draft as it is and
17 then come up with another draft such that we can
18 then post that and request additional comments?
19 Because I think there are some issues within this
20 document that we probably need to address before
21 it's sent out to the public to seek additional
22 comments. So my question is a process question.

23 SONYA ATALAY: Well, I would – I would leave
24 that open to the committee to decide. I'm quite
25 open to that, and I think we could make that

1 recommendation if someone wants to move that and we
2 could make a decision about that.

3 SHERRY HUTT: Madam Chair, if I might. If you
4 have questions as you go through this of law that
5 we can answer – that counsel can answer here, you
6 know, obvious questions they can answer here and
7 that facilitates your discussion, that's great.
8 Otherwise, please know that whatever document you
9 finish today would of necessity go to counsel, and
10 then they in the quiet of their office, in a
11 reflective situation, would look at it in full
12 before giving it back to you to go out to the
13 public. Okay?

14 ROSITA WORL: Madam Chair?

15 SONYA ATALAY: Rosita.

16 ROSITA WORL: Since this document is, you know,
17 the Review Committee has just now got it and also
18 counsel hasn't had the time to review it, and we do
19 want to have a process, and I think that it would
20 be helpful if we gave this to the Review Committee.
21 The Review Committee went back and looked at
22 everything that we did, we had the law, the
23 regulations and then all of the other documents.
24 If they would take the time to review that, review
25 the proposed changes, and also counsel would do the

1 same. And then we, at our next Review Committee
2 meeting, then we would go over it, you know, every
3 proposed change in the same way that we did with
4 the regulations this morning, the proposed rule.
5 And then – so we would go through it, and then we
6 would revise it at that meeting, accept it as our
7 proposed draft. We would then send that proposed
8 draft and put that proposed draft on the website
9 and ask all constituents, interested parties to
10 review that document, and then in the subsequent
11 meeting we would then hear their comments and then
12 respond to them.

13 SONYA ATALAY: Would anyone like to discuss
14 that procedure? Any comments on that procedure?

15 LINDALEE FARM: Again, my question is a process
16 question, because we have sort of a working draft
17 before us, and so as not to work against cross
18 purposes and thinking of how we can best provide
19 the input, whether each one of the Review Committee
20 members would make a suggestion to the subcommittee
21 and then the subcommittee would come up with a new
22 draft, if that would be the proper procedure or
23 not. Or else we may be at the same point at our
24 next meeting, making comments that we could have
25 been dealing with earlier. And this is clearly a

1 process question on how best to come up with a good
2 product. Could I ask Madam DFO or counsel to
3 assist us with this?

4 CARLA MATTIX: I think what you're asking is in
5 the interim before the next meeting can the Review
6 Committee members not on the subcommittee and our
7 office provide you comments so that the
8 subcommittee will have a new draft by the next
9 meeting?

10 LINDALEE FARM: Yes, that's correct.

11 CARLA MATTIX: And we can do that. If you want
12 to follow that process, we can do that.

13 ROSITA WORL: Madam Chair.

14 SONYA ATALAY: Rosita.

15 ROSITA WORL: It also allows the Review
16 Committee members to have the opportunity to review
17 and then they – they will have had all the
18 information that we have looked at and so that they
19 could make intelligent comments and review comments
20 and suggestions thrown in. But the existing
21 procedures would stand in place until such time as
22 we adopted a new one.

23 SHERRY HUTT: And if I might.

24 SONYA ATALAY: Sherry.

25 SHERRY HUTT: Also in this process that you're

1 developing, if you then work on the draft, get it
2 back to Sonya, and then Sonya to Carla and Carla
3 back, so that you can all look at this. If you
4 then tweak it again, then you would give me before
5 the next meeting, a month before the next meeting
6 when we try to put out the materials, so that we
7 could put it on the disc. And so that goes to all
8 of you, and it's also publically known. Those are
9 the materials for the meeting. That's what you're
10 going to start with at the next meeting. That way
11 it's up on the website. It's out to the public.
12 And if you also wanted an agenda item where you
13 invited public comment on that, we could put that
14 as an agenda item on the – as an agenda item for
15 November. And that way the public would have had
16 that period of time to see those materials before
17 they came to the meeting.

18 **REVIEW COMMITTEE MOTION**

19 SONYA ATALAY: With that in mind, I would
20 entertain a motion to set that as our process.

21 ALEXANDER BARKER: So moved.

22 SONYA ATALAY: Moved.

23 LINDALEE FARM: I'll second that with the – if
24 I would ask the DFO to restate it articulately so
25 that we all know what we're doing.

1 SHERRY HUTT: I'll give it a try. All right.
2 The — you're going to work on it today as well for
3 a bit, or are you pretty much done for today?

4 All right. The Review Committee will take the
5 draft as it's been presented by the subcommittee,
6 reflect on it, give their comments to Sonya by —

7 SONYA ATALAY: One month, 30 days.

8 SHERRY HUTT: Okay. In 30 days, which would be
9 June 10, Sonya will then, with the committee,
10 consolidate or update the draft based on the input
11 from the Review Committee. The subcommittee will
12 then give that updated draft to the DFO, and the
13 DFO will submit that draft to counsel for review.
14 And also — yes, the DFO also — the DFO and counsel
15 will then review that draft. And so that — and the
16 comments from the DFO and the counsel will go back
17 through the DFO to the subcommittee. The
18 subcommittee will take that and then produce a
19 document and give it to the DFO by October — let's
20 make a date, let's say, October 26.

21 ALEXANDER BARKER: Madam Chair, can I withdraw
22 my motion so we can restate it?

23 SONYA ATALAY: Yes, withdrawn.

24 SHERRY HUTT: So the — should I stop? Go
25 ahead? Go ahead.

1 ALEXANDER BARKER: Can I try restating this
2 very simply?

3 SHERRY HUTT: Please.

4 ALEXANDER BARKER: Members of the Review
5 Committee and counsel will review the draft and
6 provide comments within 30 days to the subcommittee
7 for consideration. The subcommittee will provide a
8 revised draft for distribution by October 26 for
9 consideration at the next NAGPRA Review Committee
10 meeting. Does that address the substance of – or
11 have I left something out?

12 SHERRY HUTT: Did you have that interim –

13 ALEXANDER BARKER: I was proposing counsel
14 could be looking at it at the same time within the
15 next 30 days.

16 SHERRY HUTT: Can we go to October 19? Lesa is
17 the one that puts together the disc, so we –

18 ALEXANDER BARKER: Madam Chair, can I ask, does
19 that if that satisfies Cissy's concern with the
20 process?

21 LINDALEE FARM: May I respond? It does
22 essentially. However, I think we do need the
23 interim step so it's clear that once we get the
24 draft that the Review Committee has sent back to
25 the subcommittee then it will go through the

1 process with the DFO and counsel and then back
2 again, and that we're not missing that step. It
3 was just wasn't clear in the way that the motion
4 was worded.

5 SONYA ATALAY: I would entertain a restatement
6 of the motion, once again.

7 **REVIEW COMMITTEE MOTION**

8 ROSITA WORL: I see a four-step process. The
9 Review Committee will review and comment on the
10 draft proposal. The subcommittee will then update
11 the draft and forward that to the DFO and the
12 counsel. The DFO and counsel will then offer their
13 comments and send it back to the subcommittee. The
14 subcommittee will update it and make it available
15 for publication by October 19.

16 LINDALEE FARM: I will second that motion.

17 SONYA ATALAY: Motion made and seconded. I'll
18 call the vote. Is everyone ready to call? Yes?

19 ROSITA WORL: Question.

20 SONYA ATALAY: Call the question. Will
21 everyone in favor of the motion, please signify by
22 saying aye.

23 ALEXANDER BARKER: Aye.

24 SONYA ATALAY: Aye.

25 LINDALEE FARM: Aye.

1 ERIC HEMENWAY: Aye.

2 ADRIAN JOHN: Aye.

3 ROSITA WORL: Aye.

4 MERVIN WRIGHT, JR.: Aye.

5 SONYA ATALAY: Opposed? The motion carries.

6 With that I will turn it back over to the
7 Chair, Rosita Worl.

8 ROSITA WORL: Thank you, Madam Chair.

9 **DISCUSSION: REVIEW COMMITTEE'S POSITION ON THE**
10 **PROPOSED REDEFINITION OF "NATIVE AMERICAN" FOR**
11 **PURPOSES OF NAGPRA - CONTINUED**

12 ROSITA WORL: Now if we could move back to our
13 previous agenda item, on the letter to the
14 Secretary of the Interior, and look at that revised
15 draft. Could it be up there?

16 MELANIE O'BRIEN: It is, yes.

17 ROSITA WORL: Okay, wonderful.

18 Has the committee had time to review that?

19 LINDALEE FARM: The next page?

20 MELANIE O'BRIEN: I'm sorry. I didn't want to
21 (portion of comment inaudible).

22 ROSITA WORL: Merv?

23 MERVIN WRIGHT, JR.: I'd like to suggest
24 striking the word "strongly" and just leave it as
25 support. That way there's no -

1 ROSITA WORL: Any objections? Any objections?

2 That's removed.

3 Further comments? Sonya.

4 SONYA ATALAY: Just one small comment. If we
5 could just make that final wording where we say,
6 "We would also respectfully request," if we could
7 just put that as a clear separate paragraph –
8 separate paragraph, just to emphasize it as a
9 separate thought.

10 **REVIEW COMMITTEE MOTION**

11 ROSITA WORL: Okay. Do we have a motion to
12 send this letter to the Secretary of the Interior?

13 SONYA ATALAY: So moved.

14 ROSITA WORL: We have a motion that the Review
15 Committee will send this letter to the Secretary of
16 the Interior through the DFO.

17 SHERRY HUTT: Yes, what we'll do – I was –

18 ROSITA WORL: First, we have that motion made
19 and seconded?

20 SHERRY HUTT: Yes.

21 LESA KOSCIELSKI: Who seconded?

22 SHERRY HUTT: Who seconded it?

23 ROSITA WORL: Who – was there a second to that
24 motion for the record?

25 ADRIAN JOHN: I'll second it.

1 ROSITA WORL: Adrian. Okay. We have a motion
2 made and seconded. Now, comments about process.

3 SHERRY HUTT: Yes, process. What we'll do -
4 because the Secretary has actually delegated NAGPRA
5 to the Assistant Secretary of Fish and Wildlife and
6 Parks, in consultation with the Assistant Secretary
7 for Indian Affairs. So if you don't mind, we'll -
8 shall we put your - you know, if you want to put
9 your letter on - did you want to sign it firsthand
10 on behalf of the Review Committee. If you would
11 just - if you would do the letter on plain
12 stationery - we've had some issues with what
13 stationery should the Review Committee use, just on
14 plain paper, and then if the Chair would sign that
15 letter as Chair of the Review Committee, and then
16 if you could just Fed Ex that to me so I have a
17 nice clear copy of your signature. And then I'll
18 put that into what we call, in bureaucratic speak,
19 a package, and then I'll get it up the chain where
20 it needs to go.

21 MERVIN WRIGHT, JR.: (Comment inaudible.)

22 SHERRY HUTT: Yes, I'll need to put a cover
23 letter on it and brief them and give them the
24 background and that sort of thing. And take it up
25 the chain so that all those in the - actually what

1 happens is it goes up through the leadership row,
2 all along the way, and that's a very educational
3 experience for all. So that's what we'll do.

4 MERVIN WRIGHT, JR.: I don't - I don't think
5 it's, you know, necessary to include the issue
6 regarding the definition, because the Review
7 Committee has supported it. The Review Committee,
8 as a committee, has supported it, not just some of
9 the members. Unless we took a vote and there was a
10 split vote, then I think you could reasonably and
11 logically say that there - some members support it.
12 But ever since 2010, the Committee has supported
13 the amendment, and so I don't know if this is going
14 to take away from, you know, the second part of
15 that second paragraph, but I would have to say that
16 if this was to go to a vote, I would oppose the - I
17 would oppose the motion.

18 ROSITA WORL: It would seem that we need to
19 clarify that. I mean, we have already adopted the
20 letter, but if there are no objections we'll go
21 back to that letter and make that clarification.

22 Go ahead, Alec.

23 ALEXANDER BARKER: I believe that the
24 transcript of the last meeting will show that the
25 report to Congress for 2011 did not endorse the

1 amendment. It recommended that Congress open
2 hearings to consider the amendment, because it's a
3 matter in which there are strong feelings on all
4 sides. And I think that the minutes of the meeting
5 will show that. I think that the actual transcript
6 of the meeting would also show that concerns were
7 specifically expressed by members of the Review
8 Committee who did not feel at that time they could
9 vote in favor of the amendment.

10 ROSITA WORL: Okay. We have an issue here for
11 the Review Committee to consider. We could either
12 change the letter to reflect the — let me, I might
13 get the years wrong, but we have two separate
14 reports to the Congress; one where the Committee
15 did endorse the amendment, and then we have the
16 second report to the Congress where we — there was
17 a change in the position. So we could either cite
18 those two — I mean, because the issue here is we
19 want the Secretary to consider or to invite the
20 NAGPRA Review Committee. That's the intent of this
21 letter here. So we could either delete it, delete
22 the reference to it, we could clarify and cite the
23 two reports to Congress, or we could vote on saying
24 what is the position of the Review Committee. So
25 we have three possible alternatives here, what is

1 the wish of the committee?

2 LINDALEE FARM: May I suggest another
3 alternative?

4 ROSITA WORL: Okay.

5 LINDALEE FARM: That we actually revise the
6 letter to simply delete the clause in the second
7 paragraph that says, "and some of our members
8 support it." Such that the sentence will say,
9 "Regardless of our views of the proposed
10 redefinition, in the future we would urge the
11 Secretary and Department to make better use..."
12 That way we don't talk about our position. It's
13 just - we should be invited. Regardless of how we
14 feel, we need to have input.

15 ROSITA WORL: So the - I mean, that would be
16 the deletion to the reference of the issue.

17 LINDALEE FARM: Correct.

18 ROSITA WORL: Okay. All right. Are we
19 comfortable with that? Merv.

20 MERVIN WRIGHT, JR.: A question maybe to
21 counsel, when we're looking at the stand-alone
22 action of the Committee, like we did in reaffirming
23 support for the amendment, as opposed to having a
24 reference in the report to Congress, you know, to
25 me it - those are two different things. And I

1 think with regard to the legality of argument,
2 let's just say, because this will probably turn
3 into an argument, I mean, what has greater standing
4 when it comes to those two matters of an issue
5 acted upon specifically and by the committee as
6 opposed to a reference in the report to Congress?

7 SHERRY HUTT: An action acted upon versus the
8 report to Congress?

9 ROSITA WORL: We have - okay. I think we - the
10 Review Committee acted to affirm its support for an
11 amendment. And then we had a report to Congress in
12 the first instance, where we also affirmed that
13 position in the report. And then we had another
14 report but did not take formal action to change
15 that position. So that's what we're asking for is
16 what -

17 SHERRY HUTT: Which is stronger?

18 ROSITA WORL: Yes, which has -

19 SHERRY HUTT: I don't know that you could
20 assess it one way or the other. We give the report
21 to Congress every year, and they really look
22 forward to it and they read it. And then it just
23 informs their action, so I can't tell you that they
24 regard one differently than another. In this
25 letter, I think Alec had said earlier that the

1 whole idea was to get them to regard you in any
2 future decision making, so that's the purpose.

3 ROSITA WORL: Okay. We still have a couple of
4 issues. We still have the letter here. Would this
5 letter suffice – would all the Review Committee
6 members be comfortable with the deletion of that?
7 Let's read it again, "for advising the Secretary on
8 matters relating to the implementation of the Act
9 regardless of our views on proposed definitions.
10 In the future, we would urge the Secretary and
11 Department to make better use of resources like the
12 Review Committee..." We could also just delete
13 that, "regardless of our views on the proposed
14 definitions and some of our members." We could
15 just say in the future, but then that –

16 SONYA ATALAY: I propose that. I would support
17 that. I think that's better.

18 ROSITA WORL: Okay. Are we comfortable with
19 that? Are there any objections? Okay. We've put
20 this back on the floor, for those of you who might
21 be parliamentarians out there. We reviewed it and
22 we acted on it, but we brought it back to the table
23 and we are now acting it on it again, which is the
24 prerogative of the Committee to do so. I don't
25 know that it's exactly the right way parliamentary

1 procedures, but it's fine if we all concur with
2 that.

3 Okay. So now let us again reaffirm that this
4 is the letter that we want to send, as revised.
5 Let's put that on the table with a formal motion.

6 **REVIEW COMMITTEE MOTION**

7 SONYA ATALAY: I move that with this — we send
8 this revised letter to Congress and to the
9 Secretary.

10 ROSITA WORL: Second?

11 ADRIAN JOHN: I'll second.

12 ROSITA WORL: Second. We have a motion made
13 and seconded. All those in favor, signify by
14 saying aye.

15 SONYA ATALAY: Aye.

16 ALEXANDER BARKER: Aye.

17 LINDALEE FARM: Aye.

18 ERIC HEMENWAY: Aye.

19 ADRIAN JOHN: Aye.

20 ROSITA WORL: Aye.

21 MERVIN WRIGHT, JR.: Aye.

22 ROSITA WORL: Those opposed say no.

23 Okay. Now we have the issue of the positions
24 of the Review Committee on the amendment to NAGPRA.
25 What is the wish of the Committee in proceeding

1 with this? Because we seem to have – there is some
2 sense that the Review Committee took some action in
3 its report to Congress but did not formally act on
4 it, but we did act on accepting the report to
5 Congress. So what's the wish of the Committee?

6 MERVIN WRIGHT, JR.: I'm not really certain
7 whether or not, you know, an action at this point,
8 you know, would really hold any merit with regard
9 to the Administration's position. The
10 Administration has taken its position; it's out
11 there, and if we take action now and let's say it's
12 a split vote and it comes out in opposition, I
13 don't know what that's going to do. Or if it comes
14 out in support of it, I don't know what it would do
15 with regard to the relevance with the fact that we
16 have the position of the Administration at this
17 point.

18 ROSITA WORL: I'd like to comment on this, and
19 I'd ask if Sonya would Chair this part of the
20 committee, so that I could comment, because I
21 definitely have a definite view on this.

22 SONYA ATALAY: Yes, I'll Chair.

23 ROSITA WORL: Okay. For my perspective, I
24 think the Review Committee has been consistently,
25 you know, favoring the amendment. That's been

1 clear of the Review Committee. And my
2 understanding is that I hadn't heard any opposition
3 to that from the scientific committee - community,
4 I'm sorry, scientific community. And it seems that
5 in this instance, we were walking together, you
6 know, recommending this to Congress. This is an
7 action that Congress will take.

8 And from my perspective, the Review Committee
9 is significant in terms of stating its position as
10 to, you know, how are we going to deal with the
11 issues that were raised by the Kennewick Man? Do
12 we want to address - we want Congress to address
13 this so that we don't have the same kind of dispute
14 in the future. And you know, where we spent, you
15 know, I don't know how many hundreds of thousands
16 of dollars where we went to litigation on this
17 issue.

18 So I think if we want Congress to really view
19 the NAGPRA Committee that it created to deal with
20 the issues of NAGPRA, it seems to me that Congress
21 would be looking to this Committee on its position.
22 So it seems to me now we have a really unclarified
23 kind of a - not really firm position. So from my
24 perspective, I firmly believe in - I support that
25 amendment, and I would have no problems, you know,

1 voting on it.

2 And if others, you know, feel differently,
3 then I think we should hear that, and I – because I
4 don't know what happened. I have no idea why the
5 position was changed. And with all respect to the
6 Committee members – I was – I missed that meeting.
7 And so I was only brought in afterwards when I was
8 – as the Chair was trying to move on sending that
9 or reviewing the minutes. I guess it was the
10 minutes, because I didn't sign the minutes so I
11 didn't sign the report to Congress, because I
12 wasn't at that Committee meeting. So I asked at
13 that time, and I was just, you know, befuddled, you
14 know, what happened at that committee meeting. And
15 so I don't know what happened to change the
16 position of the Review Committee, and I for one
17 would love to have that clarified. So I would like
18 to bring it back to the table, Madam Chair.

19 SONYA ATALAY: Are there others who would like
20 to discuss, have anything to add, any further
21 discussion?

22 ALEXANDER BARKER: Discuss bringing it back to
23 the table or the substantive issue?

24 ROSITA WORL: No, I think the substantive –

25 SONYA ATALAY: The substantive issue –

1 ROSITA WORL: You could call for a motion.

2 SONYA ATALAY: Do you have any — Alex.

3 ALEXANDER BARKER: I think I may be the person
4 who is creating a bit of a lack of clarity, and in
5 fairness, I have to say that it's not because I
6 necessarily opposed the amendment. It's because I
7 have some concerns about it, and I don't feel at
8 this point I would be able to say I support it.
9 Specifically, I should explain that my concern is
10 that — and I think it was expressed beautifully in
11 the statement that the Department made, that the
12 amendment says that Native American should be
13 determined without regard for whether or not there
14 is biological or cultural affiliation with Native
15 American groups. And in concert with the
16 regulations under 10.11, we have moved from what I
17 had understood NAGPRA was based on, which was the
18 idea that ancestral remains should be returned to
19 descendant communities, to a new interpretation
20 which says it doesn't matter whether descendant
21 communities receive back ancestral remains. That
22 is a fundamental change, and until I have clarity
23 about how that's not the only way to construct the
24 current regulations, I'm very uncomfortable with
25 amending the law to further move from the idea of

1 ancestral remains being returned to descendant
2 communities. And I just need more clarity of my
3 own, for what it's worth.

4 Thank you, Madam Chair.

5 ROSITA WORL: Madam Chair, what I understood
6 was that the amendment – the amendment to the law
7 would clarify that all remains were indigenous –
8 are indigenous. The Secretary's letter said that
9 the process would not change, the process for
10 repatriation, so that's my understanding. The law
11 is – the amendment would say that all human remains
12 found were – after – what was that date?

13 MERVIN WRIGHT, JR.: 1776.

14 (Inaudible comments.)

15 ROSITA WORL: Okay. So at that date, those
16 preceding were not Native American. Those that
17 came afterwards were Native American. So the
18 amendment would state that all remains are Native
19 American – are to be considered Native Americans.
20 The process for repatriation would not change.
21 That's my understanding, and that was what the
22 Secretary's letter said.

23 SONYA ATALAY: Mervin.

24 MERVIN WRIGHT, JR.: And I know that, you know,
25 when this amendment went up on Capitol Hill, you

1 know, for actual Congressional consideration for
2 amending the law, Doc Hastings was one of the
3 strong opponents to it. And we've all recognized –
4 when I say we, tribal communities and a lot of us
5 that have been working on the issue of the
6 amendment, know that this amendment will not
7 affect, you know, the situation with the Kennewick
8 case. It can't reverse that case. Everything that
9 has been done with the case is done. But to stand
10 hard and firm that somehow it will is wrongheaded.

11 ROSITA WORL: Madam Chair?

12 SONYA ATALAY: Rosita.

13 **REVIEW COMMITTEE MOTION**

14 ROSITA WORL: You know, I would be prepared, I
15 feel very strongly about and impassioned about
16 proposing a motion that we support the amendment.
17 But in concern for my colleagues, I would propose
18 that this be an agenda item at our next meeting;
19 that we provide – that our DFO will provide us with
20 all of the background material; that we will look
21 at, you know, what happened with Kennewick and
22 clarifying what Merv has stated, that we have all
23 of the factual information before us and that the
24 Review Committee would consider it in its next
25 meeting. And that would be before the report to

1 Congress, right?

2 SHERRY HUTT: Uh-huh. And the letter is on the
3 board, Madam Chair, and in the materials. But
4 we'll move it to - we'll accumulate all for next
5 time. Did you still want to hear the update on the
6 Kennewick Man?

7 ROSITA WORL: Yes, that's a separate.

8 SHERRY HUTT: Yes, separately. Okay.

9 SONYA ATALAY: So was that a motion?

10 ROSITA WORL: That's my motion.

11 LINDALEE FARM: I would second that motion.

12 SONYA ATALAY: The motion has been made and
13 seconded. Is there any discussion?

14 I'll call the question. Will those in support
15 of the motion signify by saying aye?

16 ALEXANDER BARKER: Aye.

17 SONYA ATALAY: Aye.

18 LINDALEE FARM: Aye.

19 ERIC HEMENWAY: Aye.

20 ADRIAN JOHN: Aye.

21 ROSITA WORL: Aye.

22 MERVIN WRIGHT, JR.: Aye.

23 SONYA ATALAY: Those opposed?

24 The motion carries. It will be on the agenda
25 at the next meeting. And with that, I'll turn it

1 over to Rosita Worl to Chair the meeting.

2 ROSITA WORL: Thank you. I'm just looking at
3 where we are on the agenda.

4 SHERRY HUTT: The next item on today's agenda,
5 if you would, would be David Gadsby.

6 ROSITA WORL: Let's look at the time. How are
7 we with time?

8 SHERRY HUTT: We're really good on time. We're
9 — we have a — in the agenda, we have a break at
10 3:00 p.m. It's now 25 'til. So would — would you
11 want Jennifer Richman or David Gadsby next.

12 ROSITA WORL: No, the other agenda item that I
13 wanted to proceed that was our review of the
14 Columbia Plateau Inter-Tribal Group, their
15 presentation, if we could put that on the agenda.

16 SHERRY HUTT: And you wanted to address that
17 now?

18 ROSITA WORL: Yes.

19 SHERRY HUTT: Okay.

20 **DISCUSSION: PRESENTATION OF COLUMBIA PLATEAU INTER-**
21 **TRIBAL REPATRIATION GROUP**

22 ROSITA WORL: So we have the — the Columbia
23 Plateau Inter-Tribal Repatriation Group came to the
24 Committee this morning, and they made a number of
25 recommendations and expressed some concerns on

1 several issues. I think there were several issues
2 that the Committee needed to address. The first
3 one was the notice and review and publications.
4 They wanted to tighten – they wanted a better
5 timeline, and I think that was the first issue, and
6 we – I'd like to have a discussion, I think,
7 whether the Committee – I think the Committee
8 itself has been trying to push for tighter
9 deadlines. So I think let's go ahead, Sonya. Do
10 you want to offer –

11 SONYA ATALAY: Yes, I just have a – well, a
12 comment. My understanding, too, was that they –
13 this morning in their presentation, they were also
14 acknowledging that there were staffing issues that
15 they learned about and were aware of, and that
16 things were moving forward, but I did wonder if we
17 could ask Sherry and perhaps Melanie, I don't know,
18 if you could just talk about what we might expect
19 as an appropriate timeline from this point forward.

20 SHERRY HUTT: If I might, and Melanie may wish
21 to elaborate, but the very thoughtful report of the
22 Columbia Plateau in so many of these issues
23 addressed a number of very specific, pertinent
24 topics. When Jaime Lavallee was leaving the
25 National NAGPRA Program, there was advice given out

1 to folks that the timeline to process notices might
2 be lengthened from the time they were submitted to
3 the office – there's two timelines; from the time
4 it was submitted to the office to the time they
5 were then prepared for approval by the originator
6 and then the time from the originator to the
7 Secretary.

8 So there's two parts here. A museum or a
9 Federal agency submits a notice to Melanie.
10 Melanie then works with the originator to get it
11 into final form. And then when she does, the way
12 it works is she sends the final form to the
13 originator. They send back a fax that's basically
14 signed off by whoever it is, the museum director,
15 the agency person, good to go, and they date that.
16 Melanie then immediately puts that into a package
17 to go up to the Secretary. I sign those notices,
18 because they're signed by the Program Manager, and
19 we put them into the document system to go up to
20 the Secretary's Office. So then the second time is
21 Interior approval process, and when the Interior
22 approves it, it then goes to the *Federal Register*.
23 And the *Federal Register* is fairly consistent. You
24 send something today – if you send something on
25 Monday, it will be published on Friday. They

1 always say there's a three day to publication, but
2 they never count the day you bring it in. So
3 that's the two parts.

4 Now when Jaime Lavallee was leaving, the
5 advice that sort of got out in the community was
6 there will be an extended period of time before the
7 National NAGPRA Program can pay attention to it.
8 In fact, what happened was, as Angela Neller
9 pointed out, Alayna picked it up pretty quick,
10 picked up the slack so there was no delay
11 occasioned by the program. When Melanie came on
12 board the first week of January, Melanie then
13 picked it up from Alayna, and Alayna is still
14 there, and so in fact the timeline for processing
15 within the National NAGPRA Program did not
16 lengthen. And that's what - there was this fear
17 factor, but then what actually came to pass was
18 that the notices moved. In fact, and let me - let
19 me refer to Melanie. She can tell you how many
20 notices she actually has on hand and the time to
21 processing. Do you mind?

22 MELANIE O'BRIEN: As Sherry said the first
23 part, the part that I'm under control of, when I
24 came on duty on January 2nd, there were 30 notices
25 in my drawer waiting - over 30 notices waiting to

1 be processed. When I left on Friday, there were
2 seven. So I've worked very hard to shorten that
3 timeframe to get through the backlog that I
4 inherited. And I'm hopeful - I can say with
5 certainty that I'm now about at three weeks between
6 when I received it and when I processed it. This
7 is all dependent on incoming notices, I should
8 stress. So if I were to get ten notices in a week
9 that would significantly impact my backlog.

10 So far they've been coming in very steadily
11 but very slowly, one or two a week. So as long as
12 that pace continues I should be able to keep a
13 three-week turnaround. And that's my goal; under
14 four weeks. Jackie accurately said that it was a
15 six- to eight-week timeframe when I had that
16 backlog. It's been significantly shortened, as far
17 as what we can control. Do you have follow up?

18 SONYA ATALAY: Well, I do, so just in terms, if
19 you could just help me out, if we were to count
20 backwards then, what is a reasonable - what would
21 you consider at this point a reasonable timeframe
22 that we might expect, including the entire process.
23 You've explained your part of it, but what would
24 you expect since you're most familiar with this, as
25 a complete timeline? And I know there is the

1 museum in there, but if we could get an estimate
2 perhaps.

3 MELANIE O'BRIEN: Okay.

4 SHERRY HUTT: Keep in mind, the first part, the
5 part that Melanie has control over, is somewhat
6 fact dependent. This is why we have to be careful
7 here, because a notice might be less than 5 pages
8 and it might be 30 pages. And some of what Melanie
9 does, by the way, when she gets these notices, is
10 she looks at it for form and format, because they
11 all pretty much go over to the *Federal Register* in
12 the same format. She wants to make sure that the
13 content is there. So there are some notice
14 submissions that are so good on the incoming that
15 they're practically ready to go out the door the
16 moment she gets them. The more a museum or a
17 Federal agency submits notices, the more final they
18 look when we receive them. If it's an entity –
19 let's just say an entity that has not done a notice
20 before, sometimes she gets things thrown to her,
21 and Jaime the same thing, that are just basically
22 random notes, in a way, because they're befuddled.
23 And so the service that's provided is to help those
24 who are not as adept at writing notices, so that
25 takes a little longer.

1 The other thing that Melanie does, and this
2 has always been the case of the notice person, and
3 that is that they are the backstop for everything
4 in the compliance documents. For instance, if a
5 notice comes in from a museum and Melanie sees that
6 it's clearly from Federal agency land during the
7 time that the Federal agency is in existence, she's
8 going to pick up the phone, contact the originator
9 and say we need to bring the Federal agency in on
10 this or defer to the Federal agency, because we
11 can't publish a notice that the museum doesn't have
12 control. So obviously that's going to lengthen the
13 time. It will put the museum and the Federal
14 agency in communication. They will then let us
15 know whether the Federal agency is going to take
16 control of the notice or whether they want to do a
17 joint notice, you see. So there's a lot of
18 variables, so it would be very difficult to put a
19 time factor.

20 What we look at in the program is how long
21 things are waiting to get processed where we could
22 make a difference, as opposed to out to the
23 originator that needs to do some more work. And as
24 a manager, I'm concerned because if a whole number
25 come in at once, we don't have the staff depth to

1 back up Melanie.

2 One thing I have requested funding for, and
3 that's still under consideration, is that we have
4 someone who's doing other things, digitizing,
5 inventories, summaries, but who's available to be
6 flexible should we get a huge incoming at one time,
7 that that person could then assist Melanie.
8 Because a full – if I'm going too long, cut me off,
9 but this might be informative. We don't often talk
10 about operations. A full-time job for a notice
11 coordinator would be publication of 80 notices a
12 year, and I base that on looking – these are things
13 that managers have to do in terms of assessing FTE
14 time and, you know, whatever. And I base that on
15 looking at, say, the National Register of Historic
16 Places. They do notice publication, and they look
17 at incoming, and they make certain kinds of
18 technical review before they send it out. And a
19 full-time – they're analogous, let's say, and a
20 full-time for one of those wonderful people is
21 about 80 a year. And that's huge, but 80 a year.

22 So when Melanie goes over a hundred, she's
23 really moving. When she gets to 200, she's in that
24 – you know, over. Now, I mean, there are
25 mechanisms within the Federal system to reward

1 people for exceptional work. I don't think they're
2 adequate, but there are some. But I worry about
3 burnout, so I need somebody to help. And you are
4 concerned, as I see, that we don't drop our
5 timelines in serving our public. So those are all
6 concerns that we share. And those - all I can tell
7 you is that we monitor that carefully and my
8 concern that has been expressed is that with so
9 many trained and wonderful professionals in the
10 museums and Federal agencies and the attention
11 that's being given to NAGPRA, I fully expect notice
12 publication to hit 200 this year, and I expect it
13 to be at that level for the next several years,
14 because there is so much activity going on out
15 there. So I worry about burning out Melanie, and
16 serving the public. But at the present time,
17 notice publication proceeds about as quickly as the
18 originators can get them to us. Melanie is
19 incredibly efficient.

20 Another thing that she does that becomes time-
21 consuming, and this reflects on some of the
22 comments you heard from others, and that is she
23 looks at the notice to make sure that the count of
24 MNI, minimum number of individuals, coincides with
25 what's in the inventory. So if the inventory

1 doesn't match the notice, then we have to send it
2 back to the originator to say, are you amending
3 your inventory or have you miscounted in the
4 notice, because the numbers need to correlate.

5 When the - when the notice is published,
6 Mariah, who does the databases, takes that and
7 references that to the inventory. So you should be
8 able to go on the database of human remains, look
9 at individuals, and see how many of those
10 individuals are in notices. A Federal agency or
11 museum should be able to go on the database and
12 say, on the human remains - as to human remains,
13 are we done yet? Have we published notices? You
14 heard from one of the Federal agencies that they
15 have, or will have shortly, published notices for
16 all culturally affiliated human remains that have
17 been in their collections, you see.

18 So we want - we want to make sure those
19 numbers jive, and we also have some sort of audit
20 corrections from the past when they didn't always
21 jive, and that's not a reflection on Jaime, I mean,
22 way in the past. So that's - you see, so if a
23 notice comes in that deals with many individuals
24 from several different sites, Melanie is the
25 backstop, as Jaime was, for all those technical

1 pieces where you – you know, you want them to be
2 done right so that the eventual reports that we
3 give you are right. It all comes down to that. So
4 that's the effort that we make.

5 Now, the second part is once I sign a notice,
6 and the communication between Melanie and I is
7 instant. When the originator faxes it in, she
8 prepares that package the same day. I sign it the
9 same day. If I'm not in the office, there's
10 someone I've delegated to sign it on my behalf, so
11 it doesn't ever sit, because I'm in training or I'm
12 somewhere. And then it goes into the system, and
13 it has to go through about ten stops on its way to
14 the Secretary.

15 Now the Solicitor's Office has facilitated
16 this. If a notice is routine, it does not go to
17 the Solicitor's Office. If there's something
18 unusual about the notice, it's my job to red flag
19 it and send it to the solicitors. We've done –
20 Carla and Stephen and I have done about a thousand
21 notices, and I'm pleased to say we haven't
22 misflagged anything that should have gone and
23 didn't go. So but they – there was a time when
24 they were in that line, and just the – just every
25 person adds another physical step. They took

1 themselves out because they trust the program to
2 move forward and to identify problems if they there
3 are problems, and there aren't often problems or
4 issues to red flag.

5 But when it goes up the process, let me tell
6 you what we do, because this was taking maybe 15
7 hours a week of my time before Melanie came. And
8 Melanie has now taken this on, so that it takes
9 less than that. And that is we have a – what's
10 called a Document Tracking System in the Department
11 of the Interior. And so we can go on – and every
12 notice that gets put in the system has a tracking
13 number. We can go on that, and we do first thing
14 in the morning, sometimes late at night, and we
15 look to see where the documents are in the process,
16 so that if they appear to be bottlenecked somewhere
17 – I used to track this myself, now Melanie tracks
18 it. If she sees that it's bottlenecked, she brings
19 it to my attention, I go over to the Department of
20 the Interior, make a personal visit and try to get
21 it dislodged, on the phone, whatever I can do. If
22 it's something where I can't make a direct contact,
23 then I rely on solicitors. Anyway that's – but
24 that's where the process takes you.

25 ROSITA WORL: We appreciate – we appreciate

1 this, but I think it's probably far more than we
2 want to know. And our - I think what we could ask
3 of you, since we - I mean, we do want to have some
4 sort of reasonable timeline. And so what I would
5 ask is that you take this concern back to your
6 office, and you maybe allocate two different kinds
7 of timelines, maybe for your simple ones and your
8 complex ones, and then tell us - come back and tell
9 us what would be reasonable for the next one.
10 Because I think not only does the committee want to
11 know, but you have many out there who are also
12 wondering about what would be a reasonable
13 expectation from the time they send in a notice to
14 its publication, if you would bring that back to
15 us.

16 SHERRY HUTT: I will carry - I will carry back
17 the message that the timeline and process is of
18 acute interest to the Review Committee and bring
19 back the comments that were made by the Columbia
20 Plateau.

21 ROSITA WORL: As well as the Committee.

22 SHERRY HUTT: As well as the Committee.

23 ROSITA WORL: Right, and one final
24 recommendation, maybe you might want to see about
25 Lean administration. I know you have a lot of

1 bureaucratic requirements, but maybe it sounds
2 like, you know, it might be good for a review, a
3 Lean administration review.

4 SHERRY HUTT: Yes, that's an Administration
5 decision.

6 ROSITA WORL: Okay. It's a recommendation to
7 you to consider.

8 SHERRY HUTT: Yes.

9 ROSITA WORL: So are we through with that, or
10 do we have another comment on this topic of notice
11 and review and publication, that topic?

12 SONYA ATALAY: I am through with that topic.

13 ROSITA WORL: Okay. Any further comment on
14 that one? Any further comment on notices,
15 publication?

16 Okay. So the next one, as I recall from my
17 notes, that they raised was the repatriation grant
18 process. They gave us very good information about
19 the grant process, and noted – and I guess they
20 referenced Sherry's reference to there's been a 300
21 percent increase in the repatriation grant
22 applications – applicants.

23 SHERRY HUTT: (Comment inaudible.)

24 ROSITA WORL: No, no. I'm not asking you
25 anything yet. So we have the two types of grants,

1 repatriation grants, the documentation grants. The
2 Review Committee has recommended in the past that
3 we – that Congress increase the funding for these
4 grants. We have done that. We have also
5 recommended that the documentation grant amount be
6 increased, and so we have the – we can make some
7 recommendation on these grants, and then it's up to
8 the staff, you know, to decide how they want to
9 proceed with that. So we do – in the past, and we
10 have appreciated that we can make recommendations.

11 The other thing that we heard yesterday is
12 that Federal agencies are now also providing funds
13 for – for reburial, and so it seems to me the
14 question or the underlying issue we have here with
15 the limited funding that we have is the allocation
16 of funds between repatriation grants and
17 documentation grants. We have heard that there's
18 an increase, and we can expect further increases in
19 those repatriation grants.

20 So I am going to offer a recommendation that
21 the review – that the subcommittee on the reburial
22 work with the staff on those repatriation grants.
23 I mean, is there – is there – should we recommend
24 that we make it the highest priority, that we
25 allocate a greater amount to that? I don't want to

1 answer it now, but I'd like the Review – the
2 subcommittee to work on that with staff. So that's
3 just one recommendation that I have on that issue,
4 but now I'll entertain further comments and
5 questions on that.

6 SONYA ATALAY: I have a question. It's related
7 to grants but not that part of the grants, and
8 that's just – I just want to reiterate again to
9 thank the Columbia Plateau Inter-Tribal
10 Repatriation Group for coming before us and for
11 their excellent research on this. I said that
12 earlier but I want to reiterate it, because it
13 really is helpful to see this, and I think we all
14 want as much information as we can get and find it
15 very valuable. So thank you again for pointing
16 this out.

17 My question for you, Sherry, is: is there
18 currently a guideline or a limit for the percent of
19 indirect or administrative costs? I mean, I was
20 surprised to see – I was just assuming that
21 administrative costs would generally be around or
22 under 20 percent, so I was quite surprised to see
23 that some were charging 60 to 70 percent for
24 administrative costs, and that that wasn't going
25 towards direct repatriation work.

1 SHERRY HUTT: Well, the — there are grants
2 rules, and you can't exceed a certain percent of
3 what we call indirect costs, and none of the grants
4 exceed that. I think what was being referred to by
5 the Columbia Plateau is that they broke it down
6 between actual costs of travel and necessity for
7 program pieces, as opposed to a consultant and the
8 time for that consultant. That consultant piece is
9 not part of indirect costs. So no one exceeds
10 indirect costs.

11 SONYA ATALAY: I didn't — perhaps I was wrong,
12 but I didn't understand them to be talking about
13 consultants. What I understood from this was that
14 they were talking about administrative costs, and
15 that it was the administrative costs that were
16 above, in some cases, 60 to 70 percent. Perhaps I
17 misunderstood that report.

18 SHERRY HUTT: The indirect costs will not
19 exceed the Federal authority in the grants
20 guidance. It's all agencies. None of them exceed
21 that.

22 SONYA ATALAY: And what is that amount?

23 SHERRY HUTT: I was thinking that it was 25 —

24 MERVIN WRIGHT, JR.: It varies. Just to add a
25 comment onto that indirect, as I understand it,

1 each tribe, you know, negotiates an indirect cost
2 rate with the National Business Center. And
3 depending on how many grants your particular tribe
4 might have and how you utilize those administrative
5 costs determines what that indirect cost rate is
6 going to be. And some – some are as high as 35
7 percent and some are as low as 13 percent.

8 SHERRY HUTT: But there's a maximum above which
9 you can't go.

10 SONYA ATALAY: Which is 25 percent?

11 SHERRY HUTT: I thought it was 25 percent, and
12 Jan Bernstein –

13 SONYA ATALAY: So I misspoke. What they are
14 speaking about in their report are administrative
15 costs are what's being referred to, and that's – I
16 apologize. That's what I'm asking about. Is there
17 a percentage that – is there a cap to that?

18 SHERRY HUTT: No, and those are the costs of
19 when they hire somebody to write the grant or
20 there's a person on staff who attributes a portion
21 of their salary to doing that grant, and that's
22 what I believe the report was referring to. How
23 much was direct in travel to get the ancestors and
24 bring them home, as opposed to the staff support,
25 if you might. And the problem that we would have

1 there if we were to set a maximum is some museums
2 or tribes have – are staffed better than others.
3 And those that are not staffed well need to go
4 outside and hire a consultant and pay that
5 consultant, and we do not restrict that, because
6 otherwise they may not have the capacity to obtain
7 the grant.

8 ROSITA WORL: And if I could, let's try to keep
9 our comments, you know, to policy issues and not,
10 you know, into the operational issues and any kind
11 of recommendations that we might want to offer,
12 insofar as policy issues, you know, like our report
13 to Congress. It seems – I mean, I think we've been
14 hearing it in all of the presentations that this
15 reburial is going to be – continue to increase.
16 And right now we're – I guess there's cutoff dates,
17 so it's not – you know, it's first-come, first-
18 served. I'm sorry, it's first-come, first-served,
19 and then the money is expended. And then so tribes
20 are not having the funds to – for the repatriation
21 grants. And I think this is a policy issue, where
22 it is the responsibility of – those human remains,
23 ancestors, were taken away. It's a civil rights
24 issue of returning those human remains, and it
25 seems that the Government has a responsibility to

1 support the tribes in this effort. So –

2 SHERRY HUTT: There are two policies, Madam
3 Chair, where we would like your comment, whether
4 you do it by committee or not – now or not. One is
5 that right now the repatriation grants begin with
6 the fiscal year and they are not competitive, but
7 we do look at the costs with them. If they are
8 going to bring 20 people on a burial committee, we
9 suggest that it be less, or they go to multiple
10 museums in one repatriation grant, not a grant for
11 each museum that they visit. However, those grants
12 are continuous through the year, and then there's a
13 cutoff point in June. And then the Review
14 Committee – or the panel on the competitive grants
15 meets in May. So when they're making their
16 recommendation, whatever dollars are left then go
17 to the project grants. When the repatriation
18 grants totaled fifty, sixty thousand, it was not an
19 issue. When they begin to total two or three
20 hundred thousand dollars, then it becomes more of
21 an issue.

22 So the policy, and this is strictly policy, is
23 do we cut off repatriation grants, the cost of
24 going to retrieve the items, at a certain
25 percentage each year of the total allotted grants?

1 And that's strictly a policy issue, and that's one
2 in which your guidance would be appreciated. The
3 other thing, of course, is how much those project
4 grants are.

5 ROSITA WORL: Right. And this was what the
6 recommendation that the Chair was offering, since
7 this is a policy question, I was hoping that the
8 subcommittee on the reburial issue would take this
9 issue up and work with Sherry on this to find out
10 more about it. Obviously, we can't make that
11 decision now, but it is a policy question. We've
12 heard that it is a growing concern and issue, and
13 so that's the recommendation, the process I think
14 we can move forward on this policy issue.

15 SHERRY HUTT: The second policy that we amended
16 last year was that previously we had not awarded,
17 as a matter of policy, repatriation grants to
18 tribes retrieving items from Federal agencies, the
19 idea being that the Federal agencies should produce
20 the funds for that. We changed that policy last
21 year, and it is the current policy that if the
22 Federal agency is unable, does not have the funds,
23 then the tribe can make a repatriation grant
24 request to retrieve items from Federal agencies.
25 That's a policy determination, one in which your

1 input would also be appropriately received.

2 ROSITA WORL: I think we're all familiar with
3 that. If there's another source, they're going to
4 go to that other pocket. So it is a policy issue,
5 and I think we need - I would ask that again we
6 refer this question to that subcommittee. And it's
7 also - and then I'm assuming that we would then
8 address the issue in our report to Congress,
9 because it's something that's going to continue to
10 grow as an issue.

11 So we - we're going to send this to the Review
12 Committee - to the subcommittee on reburial, we're
13 going to look at that policy issue on the
14 repatriation grant/documentation grants, that
15 allocation of that, but for the record, I also
16 wanted to note that it may - you know, I know that
17 most people are familiar with the requirements of
18 reburial, it varies among different tribes and
19 there are cultural protocols that are required. I
20 think you heard the Hopi address some of those
21 cultural protocols so it's going - so it may be the
22 costs are also going to vary. I know from my
23 tribes, know you, we are all - we are required to
24 have balance, so we have to send Eagles and Ravens,
25 you know, to - for the ceremonial activity. So

1 those are kind of other issues that it's not just a
2 matter of going to retrieve an ancestor, but there
3 are all of these other kind of cultural things that
4 are required by tribes. So those are going to, you
5 know, increase the costs, but of course, we want to
6 have something that's reasonable.

7 So if there are no objections to that, we'll
8 refer that issue to the subcommittee. Did anyone
9 have any further comments on that issue, though?

10 If not, I think the next issue that they
11 raised was the Kennewick Man, and we talked, you
12 know, some to the tribe – to the tribe about what
13 they could do. But I think for the benefit of the
14 Committee, it might be good to have a legal status
15 update on that, and then they had also asked for a
16 second thing, and that was to limit the access to
17 the scientific findings. And so – but let's deal
18 with the legal status update, and there may have
19 been other issues in the Kennewick Man that I
20 didn't identify. But for now let's go ahead and
21 get the legal status update, and if I could ask DFO
22 and counsel.

23 SHERRY HUTT: And we have punted to Jennifer
24 Richman, counsel, Army Corps of Engineers, in the
25 district that handled this case. And to the extent

1 that she is able to answer your questions, she will
2 do so.

3 JENNIFER RICHMAN: Yes, is this good sound-
4 wise?

5 ROSITA WORL: Sounds good.

6 JENNIFER RICHMAN: All right. I'm Jennifer
7 Richman, and I'm an attorney with the U.S. Army
8 Corps of Engineers in Portland, Oregon. And I've
9 been handling the Kennewick Man case for the Corps
10 since 2002. Sherry asked me to provide a little
11 bit of a – just a status update of what's going on
12 with the situation, in light of the Columbia
13 Plateau presentation earlier.

14 Currently, the remains are housed at the Burke
15 Museum where they've been since 1998 and the Corps
16 has no intent whatsoever of moving those remains
17 anytime soon. If you recall, the 2002 District
18 Court order, as affirmed by the 9th Circuit in
19 2004, held that NAGPRA does not apply to these
20 remains, that there's not enough information to
21 find that the remains are Native American as
22 defined by the law.

23 And so consequently, it also went on to say
24 that we needed to provide access to the remains to
25 the plaintiff scientists subject to reasonable

1 terms and conditions, and so we've been doing that
2 over the — a number of years, pursuant to the
3 curation regulations at 36 C.F.R. Part 79. The
4 plaintiff studies took place between 2004 and 2006.
5 The last access of the remains was, I think, in
6 February of 2006 by the plaintiff scientists.
7 Since that time, Dr. Doug Owsley, who has sort of
8 led the effort on behalf of the plaintiffs and his
9 team, has been editing a volume for publication.
10 There's about 30 chapters or so in that volume, and
11 as Jackie Cook indicated earlier, the Corps has
12 received fairly minimal information about the
13 substance of that. We have, in the last month or
14 so, been able to travel to DC, a couple of staff
15 members, and take a look at the manuscripts, and
16 the majority, about 27 out of the 30 chapters, are
17 close to being sent to the publisher, and
18 Dr. Owsley anticipates them going to the publisher
19 this summer sometime, with publication
20 approximately a year after that.

21 And in the meantime, we've also received some,
22 but not all, of the notes and photographs that the
23 different scientists have produced in the course of
24 the study. And those are in the associated records
25 at the Burke Museum as part of the collection. And

1 any other requests, we sort of review pursuant to
2 the curation regulations. And I'm happy to answer
3 any specific questions that you might have, if I
4 know.

5 ROSITA WORL: Questions? Do we have any
6 questions. Questions? Go ahead, Merv.

7 MERVIN WRIGHT, JR.: This is more of a comment
8 than a question, but, you know, I think in looking
9 at the decision of the court and, you know, the
10 burden that was placed upon the parties in the
11 case, there was no proof that it was not Native
12 American but yet the court ruled the way it ruled,
13 and I believe that everything that the Army Corps
14 or the agency, the United States Government has
15 done is in that same direction of not having any
16 proof that it's not Native American to do anything
17 other than what, you know, the court has asked it
18 to do.

19 And it was just a comment in general, but I
20 think that in reading the Columbia River – or the
21 Columbia Plateau report, you know, there's some
22 compliance issues they brought up this morning and
23 I would, you know, like to read that further and
24 probably be in conference with them to talk about
25 what they're referencing as far as noncompliance.

1 And but anyway, that's just my comment. Thank you.

2 ROSITA WORL: Okay. Any further comments,
3 questions? Go ahead.

4 SONYA ATALAY: I just have a brief question,
5 which is just to see if there is a plan in place or
6 if you're thinking of developing a policy about
7 giving – providing regular updates to the Columbia
8 Plateau group.

9 JENNIFER RICHMAN: We, at the tribes' request,
10 the claimant tribes that have been involved, which
11 are most of the tribes involved with the
12 repatriation group, Columbia Plateau, we've met
13 twice over the last several months and then we have
14 plans of meeting again to continue that dialogue.
15 And so we are doing that, so it's not a written
16 policy but when asked we are having meetings with
17 them.

18 ROSITA WORL: Any further questions, comments?
19 I have one question. You made a statement that you
20 had no intent to remove the remains from the Burke
21 Museum. Is that forever?

22 JENNIFER RICHMAN: Until such time – there's
23 been some discussion that the Corps had had plans
24 of moving the remains to the Smithsonian or
25 somewhere else, and we don't. We intend to keep

1 them in the state of Washington, and the Burke
2 Museum is an excellent facility for that. So we
3 don't have any plans of moving. If the situation
4 changes then – you know, we can't say forever, but
5 at this time we don't have any plans.

6 ROSITA WORL: I have a follow-up question.
7 Would the court decision allow for the return if
8 the Corps or the scientists so agreed? What's the
9 – I'm sorry. I don't understand. I mean, is there
10 a way for it to be returned?

11 JENNIFER RICHMAN: If new information came to
12 light, we would relook at what that would mean in
13 terms of whether or not NAGPRA applies at a
14 particular time. In the future, if the law
15 changes, we would review that in light of a change
16 in the law or regulations or additional
17 information, such as the information that the
18 plaintiff scientists are working on now.

19 ROSITA WORL: So it may be the scientists might
20 find that he is Native American and make that
21 recommendation. That's a possibility.

22 JENNIFER RICHMAN: Could be.

23 ROSITA WORL: All right. Any other questions
24 or comments?

25 SONYA ATALAY: One more brief question.

1 ROSITA WORL: Yes, go ahead.

2 SONYA ATALAY: What is – inform me because I
3 don't know. What is the policy, you said
4 reasonable access, that the scientists have
5 reasonable access. Does that include the ability
6 to do destructive analysis? And if so, how would –
7 how does that work procedurally? Is there
8 permission given from the Corps for that, or what's
9 the process for that?

10 JENNIFER RICHMAN: Permission would be given by
11 the Corps of Engineers, and we have an
12 administrative sort of process right now where the
13 Brigadier General for the Northwestern Division
14 sort of makes the ultimate decision for that. The
15 curation regulations at 79.10 talk about access to
16 collections for various uses, scientific,
17 educational, religious and ceremonial use, and for
18 the destructive tests, it says something along the
19 lines of whether or not a destructive analysis
20 outweighs the research potential of the collection.

21 With the different studies that these
22 plaintiff scientists have requested, they've been
23 very minimal, and the only destructive testing that
24 we've allowed have been on parts of the collection
25 that had already been sampled in 1999 and 2000,

1 that the Government did to support its initial
2 finding of cultural affiliation and Native American
3 during the litigation. So there were samples left
4 from those studies, and that's what has been used
5 so far. And any other requests for destructive
6 testing we have denied.

7 SONYA ATALAY: Where are those samples
8 currently located? Do they reside in the Burke, as
9 well?

10 JENNIFER RICHMAN: At the Burke Museum, yes.

11 ROSITA WORL: Any further comments or
12 questions? If I could, I'd just like to offer a
13 personal statement, my own personal – we in our
14 land have also discovered an ancient human remain,
15 an ancestor, 9,000 years or more, and we worked
16 collaboratively with the Federal agencies and
17 tribes, and I think it was good for both the tribe
18 and also for science. And in this instance, I
19 think it's not working to our advantage, and I'm
20 hopeful that at some point in time we are going to
21 see resolution for this issue based on both the
22 tribal beliefs and also just on basic human rights
23 issue. So I mean, I really do want to wish you
24 well and hope that you could work through a process
25 that could benefit everyone.

1 JENNIFER RICHMAN: Thank you.

2 ROSITA WORL: Any further comments before we
3 move on to the next issue, which is break.

4 Thank you very much for doing that. Thank
5 you. We appreciate that update.

6 Oh, I'm sorry. The other issue that they had
7 raised was this access to the scientific findings.
8 And I have no idea, you know, what kind of – it
9 doesn't sound like we have any kind of legal rights
10 in this issue, other than to note that the tribe
11 did raise an issue and we're – I, at least, am
12 concerned about it and wish we could have some
13 resolution for the tribes and the scientists
14 working on this.

15 SHERRY HUTT: Well, is that something you'd
16 like investigated or reported on?

17 ROSITA WORL: Go ahead, if you have comments?
18 You didn't have an easy solution there.

19 SONYA ATALAY: Can I –

20 ROSITA WORL: Go ahead. Go ahead.

21 SONYA ATALAY: – just make a brief comment on
22 that. Just very brief, which is to say that I
23 think it's in everyone's best interest that all –
24 not just this scientific information but all
25 scientific information is shared broadly with the

1 public. And I know that archeologists work very
2 hard to do that and many are more committed than
3 others, but I think that particularly in this case,
4 that it can only benefit everyone to share that
5 data and information broadly. Thank you.

6 ROSITA WORL: Alex.

7 ALEXANDER BARKER: I simply have a question,
8 and I may have misunderstood. I had understood
9 that the concern was limiting access by scientists
10 to the remains, rather than the concern that access
11 was not being granted to the results of research.
12 And again, I don't know the answer. I just had
13 misunderstood.

14 ROSITA WORL: Okay. That's all right.

15 SONYA ATALAY: They are here. Could we perhaps
16 ask for clarification on that?

17 ALEXANDER BARKER: Please.

18 SONYA ATALAY: Thank you.

19 JACQUELINE COOK: Thank you for asking for
20 clarification on that. We're happy to do that.
21 Our concern is that there's been too much access,
22 and to – that there's been enough studies between
23 the Government studies for the litigation and now
24 the plaintiff studies. We want all that
25 information available for future researchers so

1 that that individual doesn't have to be disturbed
2 any more. I don't know what else could be done to
3 him. So that's - that's the tribes' concern at
4 this point, that the Corps does receive all of
5 these studies and results and that they are
6 available to anyone who is asking for access so
7 that he doesn't have to be disturbed again. So
8 that's it. Does that answer your question?

9 ALEXANDER BARKER: I think so, and I apologize.
10 I made it through most of the meeting without
11 losing my voice, but I'm losing it now. Is there a
12 concern that if, for example, the tribe were to
13 request access to research results that access is
14 not being allowed, or is it simply that you feel -
15 and I just - I don't mean to put words into your
16 mouth, but what I think I'm understanding you to
17 say is that an enormous amount of research has
18 already been done and that research should be
19 sufficient rather than additional work being done
20 with the actual human remains.

21 JACQUELINE COOK: Correct. Correct.

22 ALEXANDER BARKER: It's not a matter of the
23 results are not being made available, it's that
24 they should be the basis for future research rather
25 than additional access.

1 JACQUELINE COOK: Yes, to both of those.
2 Actually, because there has been limited reporting
3 on the plaintiff studies, that – and you know,
4 they're concerned about publication and
5 intellectual property and all that kind of stuff,
6 those results haven't been made available, even at
7 least to the Corps. And this started as a question
8 from the Colville Tribe: Where are these reports?
9 Where are the interim reports? Where are the draft
10 reports? Because the – that's just good science is
11 having draft reports and reporting to that
12 collection owner, as we refer to the Corps. So we
13 want to make sure that that material, as well as
14 all the studies that were done beforehand, are
15 available, and so that there's no excuse for
16 researchers to have to redo this work again, so
17 yes.

18 ALEXANDER BARKER: Thank you for the
19 clarification.

20 JACQUELINE COOK: Sure. Thank you.

21 ALEXANDER BARKER: Thank you, Madam Chair.

22 ROSITA WORL: And then the final – or do we
23 have anything more on that, the Kennewick Man?

24 The other one that I had – I had two more, one
25 was on compliance. There was reference to Federal

1 agency compliance, and then also national training,
2 and I think we all support continued training. We
3 want to continue that, so I don't think it's an
4 issue.

5 SHERRY HUTT: I think what they're referring to
6 there is as of August the funds that we've been
7 using for the NPI trainings will come to an end.
8 And during the lunch break, I was discussing with
9 Kim Spurr both of those issues, Federal agency and
10 museum compliance and training, so that we could
11 look at ways in which the reports could be brought
12 to you in November.

13 ROSITA WORL: Great. So if there are no
14 comments or questions on these, on the report,
15 let's - go ahead.

16 ALEXANDER BARKER: One very brief one.

17 ROSITA WORL: Yes.

18 ALEXANDER BARKER: I believe the other issue
19 that was raised in the presentation was that the
20 Review Committee meetings should ideally be in
21 areas that are accessible to the tribes involved.
22 And I think that's something that both the
23 committee and National NAGPRA Program would welcome
24 and work toward. Is that -

25 SHERRY HUTT: It is.

1 ROSITA WORL: Okay. I'm sorry. We had one –
2 where are we in terms of our time? We had one
3 other issue was that David Gadsby report. How long
4 is that report?

5 SHERRY HUTT: (Comment inaudible.)

6 ROSITA WORL: How many?

7 SHERRY HUTT: Fifteen.

8 ROSITA WORL: Fifteen? Can you do it in ten?
9 And this is just an informational one. There's no
10 action required from the Review Committee.

11 SHERRY HUTT: And I misspoke before when I said
12 consultation. This is preregulatory rulemaking,
13 receiving input, much as we did with you all when
14 we were talking about 43 10. So this is David
15 Gadsby.

16 ROSITA WORL: I think that's different and
17 we've never – we don't have that material here. I
18 think we'll allow you to make the presentation, and
19 then if we have any comments, we'll make it at that
20 time. But I do think it's something that we do
21 need to bring before the Committee and have the
22 Committee, you know, have the ample time to review
23 it and act on it. So go ahead and make your
24 presentation.

25 **PRESENTATION: CARING FOR AN ARCHEOLOGICAL LEGACY:**

1 **36 C.F.R. 79 AND THE CURATION OF FEDERAL**
2 **COLLECTIONS**
3 **PRESENTATION**

4 DAVID GADSBY: So my name is David Gadsby. I'm
5 in the Archeology Program of the National Park
6 Service. I'm here on behalf of that program and
7 also on behalf of the Departmental Consulting
8 Archeologist, who is seated in the Park Service.
9 And what I'd like to talk about is a proposed
10 change to 36 C.F.R. 79, give you a little bit of
11 background but less than I was intending to give
12 you, and then move into what – the changes that
13 we're proposing fairly quickly.

14 I just want to say that I don't have a
15 document to share with you today because we're
16 still hammering out the final draft on it. And so
17 why – the reason that I'm here is really to share
18 some information with you for the sake of daylight
19 and to let you know that this change is coming so
20 there's no surprises.

21 So as you know, the Federal Government – thank
22 you. The Government cares for a number of heritage
23 collections and has for a long time, and we are –
24 we are responsible to doing so under a number of
25 authorities, including NEPA and NHPA. And many of

1 these collections are in Federal repositories, some
2 are in non-Federal repositories as well.

3 36 C.F.R. 79 is the regulation that
4 specifically addresses the curation of
5 archeological collections. The goal is to ensure
6 long-term management and preservation of archeology
7 collections. It's under several authorities, not
8 just ARPA, but the Antiquities Act, Reservoir
9 Salvage Act, NHPA, and ARPA. And one important
10 piece of it is that it requires of the Federal
11 Government fiscal responsibility and specifies that
12 agencies are responsible for the long-term costs of
13 curation. And you can see there's a link there to
14 the full rule, and I'm happy to share that with you
15 at another time if you would like to see, but it's
16 on the Archeology Program website.

17 So the rule applies specifically to
18 collections, objects collected under its various
19 authorities, the records associated with that, and
20 it requires that the repositories that store them
21 have long-term capacity to do so. It covers the
22 management and preservation of collections,
23 provides methods to secure services, methods to
24 fund them, and provides guidance for Federal
25 agencies on how to select a repository, access to

1 and use of collections, an issue that you just
2 discussed some, and inspections and inventory.

3 Currently what is not in existence in 36
4 C.F.R. 79 is a mechanism by which Federal agencies
5 may dispose of objects that are not of "sufficient
6 archeological interest," and I'll get to what that
7 means in just a moment. So that - that initial or
8 that piece of the regulation was initially proposed
9 in 1990 and then for a variety of reasons it was
10 dropped out after the public comment period. It
11 just wasn't sufficiently worked out at that point.
12 There were concerns raised about types of objects,
13 what types of objects would be discarded and how
14 they might be discarded. And so the regulation
15 wasn't promulgated with that section. But there
16 are renewed pressures to deaccession for a couple
17 of reasons, especially because there's a space
18 crisis. Jason mentioned that with respect to
19 Federal records. It's also true of Federal
20 collections. And also there just - you know,
21 there's an increasing recognition on the part of
22 curators that there are things that we just can't
23 sustainably keep in these collections.

24 And so, there's a few guiding principles for
25 going forth with deaccessioning. One is to

1 preserve the integrity of collections so there's no
2 loss of value. Deaccessions must be justified, and
3 that's done with consultation with subject matter
4 experts and tribes as well. The process must be
5 deliberate, ethical, rigorous and open, with checks
6 and balances. And I'm not going to get into the
7 full process, but I'm happy to answer questions
8 about it or talk to you about it at another time.
9 And it has to be, obviously, consistent with all
10 Federal laws and policies, including NAGPRA. And
11 NAGPRA is specifically mentioned, as objects that
12 qualify under NAGPRA can't be deaccessioned under
13 this new rule.

14 So I already mentioned there's a couple of
15 reasons that we want to do these – that we want to
16 issue this rule now. So what we want to do is
17 deaccession objections of "insufficient
18 archeological interest" and it's limited only to
19 those that are – that the Government controls.

20 "Insufficient archeological interest" means
21 objects that lack archeological provenience, lack
22 physical integrity, are determined by qualified
23 archeologists to be overly redundant and not useful
24 for research. This can include objects from
25 historic collections, as well as prehistoric

1 collections. So when we talk about what kinds of
2 things are involved, we mean objects where
3 provenience information has been destroyed, you
4 know, some of these collections are decades, if not
5 a century or more, old, and so they suffer the
6 ravages of time sometimes; soil samples that have
7 been damaged through decay, decomposition; nails
8 and brick fragments that have been collected as
9 under the archeological impulse to collect, but
10 don't serve a specific research purpose, and can be
11 for the most part deaccessioned. And there's
12 already an existing way to determine "insufficient
13 archeological interest" in the ARPA reg. This is a
14 little bit different.

15 Deaccessioned objects, at least a sample as
16 determined by the technical experts that are being
17 consulted on this, is retained with proper
18 documentation. The rest can be deaccessioned.
19 Once they're deaccessioned, they're offered to
20 tribes, other Federal agencies, scientific
21 institutions, other institutions for public
22 benefit. If there's no — if no one is willing to
23 take them, they can be destroyed, and the Federal
24 agency official has to be present and witness the
25 destruction. The procedure is designed to be

1 flexible so it's not a specifically proscribed
2 procedure, but the Federal agency official and his
3 committee consult – his committee of consultants
4 have to have written procedures by which they
5 proceed. And then finally, there's an appeal
6 procedure that can be made to the DCA by – on a
7 decision made by a Federal agency official.

8 And so just quickly where we're going next
9 with this is that I'm working now with an
10 interagency group, and Stephen and Carla and some
11 folks from BIA as well, to get some final language
12 for this, and then we'll be circulating to tribes
13 with a "Dear Tribal Leader" letter, also to THPOs,
14 and I'm happy to provide this committee with copies
15 of the letter as well, that will include the final
16 language of the reg as we want to go forward, and
17 we'll take it from there.

18 **REVIEW COMMITTEE QUESTIONS AND DISCUSSION**

19 ROSITA WORL: Great, thank you very much. Do
20 we have any comments? Alex.

21 ALEXANDER BARKER: From a process standpoint,
22 if materials are being considered for deaccession,
23 first, who is proposing the deaccession, and
24 second, how is it announced? Is it a notice in the
25 *Federal Register*? What's the procedure?

1 DAVID GADSBY: There — the Federal agency
2 official, so the person with direct management
3 authority over the collection, is the one who
4 proposes the deaccessioning. They do some
5 notification and consultation prior to the
6 deaccessioning actually happening with — if tribes
7 are affected, with those tribes, with experts
8 within the agency, and then maybe if necessary
9 Federal experts outside the agency. And then once
10 the determination has been made and the course of
11 action has been determined, yes, they advertise
12 that determination in the *Federal Register*.

13 ALEXANDER BARKER: Thank you.

14 ROSITA WORL: Any further questions, comments?
15 Sonya.

16 SONYA ATALAY: Have there been requests or
17 concerns coming forward about potential interest in
18 this, where people are saying there's a need and
19 they have collections that they would like to
20 deaccession? Is that part of what has prompted
21 this, or do you know of such collections?

22 DAVID GADSBY: You know, I'm relatively new to
23 working on this, but my understanding is that
24 there's a wide interest in this in the curation
25 community. That is something that curators would

1 like to see go forward and are anxious to see
2 happen, eager to see happen.

3 SONYA ATALAY: Thank you.

4 ROSITA WORL: Any further questions?

5 Thank you very much.

6 DAVID GADSBY: Thank you for your time. I
7 appreciate it.

8 ROSITA WORL: So could the DFO advise us as to
9 — on public comment? We were supposed to begin
10 public comment at 3:15. Do we have a long list or
11 —

12 SHERRY HUTT: It's a short list.

13 ROSITA WORL: It's a short list?

14 SHERRY HUTT: Yes, I have three, three on the
15 list. Shall we proceed through? What's your
16 pleasure?

17 ROSITA WORL: Can you — what's the wish of the
18 committee. Should we just go ahead and hear the
19 three and then we could adjourn after that?

20 SHERRY HUTT: I now have four.

21 ROSITA WORL: Okay. We'll go ahead and proceed
22 then.

23 SHERRY HUTT: All right. The first that I have
24 on the list is Angela Garcia-Lewis and Shane Anton
25 from Salt River.

1 **PUBLIC COMMENT**

2 **ANGELA GARCIA-LEWIS/SHANE ANTON**

3 SHANE ANTON: Good afternoon.

4 ROSITA WORL: Welcome.

5 SHANE ANTON: These comments are presented by
6 myself and Ms. Garcia-Lewis. We're from Salt River
7 Pima-Maricopa Indian Community located in – near
8 Scottsdale, Arizona. Further on going through my
9 comments, I'll refer to our community as the
10 SRPMIC, to shorten it, to make it easier. We're
11 located – like I said, we're located in South-
12 Central Arizona, nearest the city of Scottsdale,
13 Arizona.

14 ROSITA WORL: Excuse me, is his mic on?

15 SHANE ANTON: Do I have to – is that better?

16 ROSITA WORL: There we go. There we go.

17 SHANE ANTON: The SRPMIC is located in Central
18 Arizona nearest the city of Scottsdale, Arizona,
19 adjacent to the metropolitan Phoenix area of
20 Arizona. The SRPMIC consists of a confederation of
21 O'odham and Piipaash tribes, which are two
22 different and distinct cultures with unique
23 histories and languages. The SRPMIC and the Gila
24 River Indian Community of the Four Southern Tribes
25 of Arizona claim aboriginal title to 3.8 million

1 acres of South-Central Arizona, as adjudicated in
2 1970 by the U.S. Indian Claims Commission.

3 The Four Southern Tribes of Arizona currently
4 use the combined adjudicated land claims area of
5 the Salt River Pima-Maricopa Indian Community, the
6 Gila River Indian Community, the Ak-Chin Indian
7 Community, and the Tohono O'odham Nation as the
8 basis for consultation, although recent
9 anthropological studies have confirmed that the
10 aboriginal land use area of the O'odham, Piipaash
11 and their ancestors are more widespread than
12 originally recognized by the ICC. Existing
13 eastward into present-day New Mexico, northward
14 into present-day Utah, west to the Pacific Coast,
15 southward of the Sierra Occidental into Mexico,
16 where there are still O'odham villages that are
17 part of the Tohono O'odham Nation today. This area
18 is vast, representing a total area larger than some
19 entire states, including several different
20 landscape types, including all land jurisdictional
21 – jurisdictions, sorry, tribal, state, Federal and
22 private, which makes implementation difficult in
23 some cases.

24 The SRPMIC conducts consultation and consensus
25 with the Four Southern Tribes of Arizona, and I'll

1 refer to them as the Four Southern Tribes going
2 forward, which include Salt River Pima-Maricopa
3 Indian Community, the Gila River Indian Community,
4 the Ak-Chin Indian Community, and the Tohono
5 O'odham Nation. The Four Tribes have a
6 relationship of shared group identity that can be
7 traced historically and prehistorically between the
8 Four Southern Tribes of Arizona and the people that
9 inhabited the Southern Arizona and the northern
10 region of present-day Mexico, from the time when
11 the first people walked these lands and time
12 immemorial.

13 The SRPMIC acknowledges the great importance
14 of the NAGPRA and are very grateful for the
15 opportunity to come forth today to make these
16 comments in the hopes of bringing a sense of
17 understanding, cooperation, respect and dignity for
18 all people and entities involved in this process.
19 Our comments were generated somewhat quickly. We
20 didn't plan on making them today, but just as the
21 meeting was going forward we formulated some ideas.
22 And we may submit additional comments at a later
23 date or if requested for clarification.

24 Regarding consultation, agencies have been –
25 I'm having trouble with my glasses – approaching

1 consultation, comprehensive agreements and plans of
2 action from a multi-tribal approach, which we
3 consider unacceptable to the tribes for several
4 reasons. The SRPMIC has participated in several
5 different consultations with several different
6 agencies where we requested individual meetings,
7 including only the Four Southern Tribes based on
8 our shared group identity. Several agencies have
9 refused our request based on internal restrictions
10 that state that all meetings must be joint tribal
11 meetings because of funding restrictions. Various
12 Federal agencies, museums need to educate their
13 administrative staff to understand that the NAGPRA
14 process, although a Federal law with a specific
15 process, deals with deep spiritual and religious
16 beliefs that are very important and sensitive to
17 the tribes, and we cannot conduct the consultations
18 as though the religious cultural matters can be
19 compartmentalized to fit into an administrative
20 model that is based on fiscal savings.

21 Agencies have to be more cognizant of the
22 confidential nature of the meetings. We've had
23 problems with our sacred cultural information being
24 shared inappropriately where our cultural
25 information has been appropriated by other parties

1 and used without our permission or foreknowledge.
2 When they had other people in the meeting who
3 maybe, you know, weren't specific to it or were
4 there for other reasons, and they didn't kind of
5 notify us or let them know the sensitive nature of
6 the meeting.

7 The agencies don't recognize – the agencies
8 don't recognize multi-tribal consultation is not
9 always appropriate due to different cultural
10 beliefs. There is a tendency to think that all the
11 tribes that claim cultural affiliation to a
12 particular archeological material culture are
13 culturally interchangeable and run meetings as
14 such, even though the views are very different.
15 The agencies are reluctant to make a specific
16 cultural affiliation determination and this causes
17 a host of problems, as the agencies expect the
18 tribes to compromise on NAGPRA disposition and
19 don't seem to realize that they are asking us to
20 compromise our cultural and religious values for
21 the sake of their convenience.

22 When tribes are unable to agree, the
23 consultation stalls and repatriation or reburial is
24 stalled or halted because the agency officials are
25 afraid to offend one tribe or the other. The

1 SRPMIC and the Four Southern Tribes are often left
2 out of NAGPRA consultations. Many agency officials
3 consult only with those tribes that are close to
4 their facilities and with whom they have a close
5 relationship, rather than by following a
6 transparent process of consultation. There must be
7 reciprocity in terms of communication with tribal
8 groups. When a tribe requests information or
9 submits requests – requests information on any
10 NAGPRA process, agencies should be required to
11 respond in a timely manner.

12 When we're establishing cultural affiliation,
13 the SRPMIC is concerned that the preponderance of
14 evidence seems to be subjective to the institution
15 and at the discretion of the institution. In some
16 cases, tribes have no trouble establishing cultural
17 affiliation and repatriating collections recovered
18 after 1990 under section – subsection 10 (3) and
19 (4), while historic collections, sometimes from the
20 very same sites or archeological regions are very
21 different – are very difficult to repatriate, even
22 though the tribes have already repatriated numerous
23 collections that are contemporaneous to the
24 historic collections with no problems. Many of the
25 people and objects represented in the historic

1 collections have been in custody for longer than
2 they have lived.

3 Then entities refuse to establish cultural
4 affiliation without giving feedback as to what
5 evidence is needed to complete the claim. The
6 entities are not required to provide a logical and
7 detailed response to explain why they do not accept
8 certain evidence.

9 The SRPMIC recommends that the National Park
10 Service institutes – institute NAGPRA guidance and
11 training for museums and Federal agencies on how to
12 determine cultural affiliation to establish a fair
13 and consistent process for establishing cultural
14 affiliation. The National Park Service could
15 develop a template for the cultural affiliation
16 reports that tribes can use to make claims that are
17 evaluated according to an established protocol.

18 With that, it's kind of a longer comment, so
19 we've divided it up, and Ms. Garcia-Lewis is going
20 to go forwards with it. I'd just like to say that
21 one thing we did hear a lot today was the
22 determination or finding Federal lands to bury on
23 or near where remains are discovered. And just for
24 different cultural reasons, the Four Southern
25 Tribes do not believe in that practice, but she'll

1 address that further in her comments.

2 ANGELA GARCIA-LEWIS: Okay. Back to cultural
3 affiliation. Can everybody hear me? Okay. One
4 thing that we have a major problem with is
5 traditional cultural information is generally not
6 given the same evidential weight as the other lines
7 of evidence. And it's difficult because the – in
8 our region, sometimes the archeological and
9 ethnographic information is full of a lot of
10 misinformation, because of the fact that when they
11 were talking with the people, there's a lot of
12 cultural and religious background differences on
13 top of the existing language barriers.

14 Then another issue that we have is there
15 should be some safeguards for the tribes to protect
16 themselves from having to continue to provide more
17 and more cultural information to try to establish
18 preponderance of evidence. In some instances,
19 we're concerned that the consultations are viewed
20 as intelligence gathering to establish additional
21 research questions for the collections to be held
22 longer, and this has been sometimes an issue that
23 we've dealt with.

24 In some cases, the institution or agency will
25 not repatriate unless there's a prior precedence

1 that other museums have already repatriated remains
2 from the discovery area and from the temporal
3 period as the historic collections they are
4 holding, despite the tribe satisfying the lines of
5 evidence for the preponderance under the law. In
6 other cases, the institution or repository will not
7 repatriate, even if the precedent and preponderance
8 are both satisfied.

9 Although the tribes do recognize the benefit
10 of the new regulations for the CUI – for
11 repatriation of the truly culturally unidentifiable
12 in museums and agency repositories, the Four
13 Southern Tribes have noted that some entities are
14 denying cultural affiliation without providing any
15 feedback at all and insisting the tribes repatriate
16 under the new CUI regulations. This is – we’re
17 leery to do that, because the traditional cultural
18 information is all there but we’re worried that, if
19 we do so, it will be perceived as the tribes
20 admitting that they’re not able to affiliate. So
21 we’re concerned that even though we’re able to
22 fulfill all of the lines of evidence, the museum or
23 entity can arbitrarily decide they’re not going to
24 affiliate with us and then we have to move forward
25 under CUI. And then they can say, well, of course

1 they couldn't affiliate under. And so we're
2 worried about that. And then we're reluctant to
3 repatriate under the CUI regulations because we're
4 unable to repatriate funerary objects, and for the
5 Four Southern Tribes, that's a cultural violation.

6 The SRPMIC feels there should be more in the
7 regulations, and they should require the transfer
8 of control of both human remains and their
9 associated funerary objects to the appropriate
10 Native American groups, since the new rule is not
11 clear regarding the disposition of associated
12 cultural or funerary objects. We feel it's
13 inconsistent with United States common law to allow
14 the museums and Federal agencies to keep associated
15 funerary objects while requiring them to transfer
16 the control of the remains.

17 From our perspective, funerary objects
18 represent offerings intended as gifts and spiritual
19 offerings to the deceased. Tribal members placed
20 the offerings with the deceased relative or fellow
21 community member, whom they're also considering a
22 relative in that sense, as a religious practice.
23 That's a vital part of religious and cultural
24 rituals performed at the death on behalf of the
25 deceased and for the living community. We believe

1 these items are the property of the deceased, and
2 no one should deprive the dead of his or her
3 tributes from the living, which is also supported
4 by legal precedent that states that the living have
5 an obligation to care for the dead.

6 The disruption of a spiritual process by
7 burial disturbance and excavation and then
8 appropriation of funerary objects is a violation of
9 the tribe's religious freedom and endangers the
10 tribal members' health and welfare to such an
11 extreme extent that within our communities it's
12 just common knowledge you don't – you don't
13 separate the remains from their objects. The
14 placement of funerary objects, their protection,
15 and the community's continued respect of those
16 objects gives the living comfort, at the time – and
17 it underscores the fact that at the time of our own
18 death, at the time of the community's – you know,
19 the peoples' own death, that they'll be respected
20 and honored in the same way that all of our people
21 have honored and protected our ancestors from time
22 immemorial. In that way, we can deduce the
23 preference of the deceased in any NAGPRA situation
24 concerning the disposition of his or her – their
25 body and their funerary belongings.

1 And coming to that, Shane mentioned reburial
2 in situ. The agencies have recently begun to see
3 reburial on agency lands as a favorable distinction
4 that demonstrates their tribal relationships. And
5 as such, they've begun to persist in trying to
6 persuade the tribes to establish reburial sites on
7 Federal lands. Agencies need to be reminded to
8 listen to the cultural and religious values of the
9 different tribes instead of superimposing their
10 religious ideals of one group on the other tribes.
11 We understand and respect that many tribes believe
12 that previously excavated or recently impacted
13 burials should be reburied as closely as possible
14 to the original burial site, but the SRPMIC and the
15 Four Tribes do not rebury in situ or within
16 archeological sites or on Federal lands.

17 The first reason, of course, is the cultural
18 or religious reason for not doing so, and we can't
19 go into that very much here, especially given that
20 the information is out there for the public, but we
21 — we recognize other reasons that are more
22 practical issues. The major issue is that the
23 SRPMIC is concerned that the Federal Government has
24 different objectives and the agencies can't
25 guarantee protection for burials in perpetuity.

1 The agencies have conflicting land-use mandates
2 that put burials at risk of future disturbance or
3 even possible removal in the future. We're worried
4 that Federal land exchange is a possibility, and
5 we've been party to different cases where lands
6 that have burials within the area and extensive
7 sites have been part of land exchanges for energy
8 purposes. And it became more of a – you know, we
9 just – at first we wanted to just ensure that
10 everybody understood that not all tribes follow
11 that particular ideal of wanting to rebury in situ
12 or on Federal lands, but then we became a little
13 bit more worried once the – it became an issue of
14 tying repatriation money, repatriation grant money
15 to that process of reburial on site. And we just
16 wanted to make sure that we underscored that not
17 all tribes undertake – will take advantage of that
18 opportunity to rebury on Federal lands, and we're
19 concerned that the funding might be tied to that
20 issue.

21 We have a lot more comments in regard to the
22 overall NAGPRA, but we just wanted to go through
23 those particular issues. And we can submit the
24 comments electronically, if necessary.

25 ROSITA WORL: I think that would be very

1 helpful if you would submit them electronically,
2 because what I would like to do is to refer that
3 section on the reburial to – we've established a
4 subcommittee, and I know that they would like to
5 take your comments into consideration, so that
6 would be very helpful for us. Your issues on
7 culturally – cultural affiliation, I think is
8 something that we could refer to the NAGPRA staff
9 to deal with in training. It seems like we need to
10 do some training in that area. We want to be able
11 to address, you know, all of your different issues.
12 The issue on – it sounds like we need to have
13 consultation on consultation, and it sounds like we
14 need to make that recommendation, because I think
15 this is a problem elsewhere, you know, that tribes
16 may have expressed this very same concern about
17 consultation, needing that.

18 Go ahead, Merv.

19 MERVIN WRIGHT, JR.: Yes, thank you. With
20 regard to consultation, the Interior Department
21 just recently issued a new consultation policy and,
22 you know, I would advise to review that policy and
23 contact the appropriate agency and utilize that
24 policy to basically give that direction for your
25 discussion.

1 SHANE ANTON: And just a last comment, we just
2 don't like that a lot of the issues of not doing
3 things are an inability to facilitate the law falls
4 on a fiscal responsibility or we don't have the
5 money to do it, and therefore that makes them
6 devoid of following NAGPRA. I don't believe that's
7 the case.

8 ANGELA GARCIA-LEWIS: And to that, a lot of the
9 people that we deal with on a daily basis, the
10 people that are in the field or in that particular
11 park, they understand our concerns and they want to
12 follow through with the issues that we bring
13 forward, but a lot of times they're restricted by
14 the administrative staff not understanding what
15 they're asking or why they're asking for it or just
16 saying, just tell them no, we can't do that, just
17 tell them no.

18 ROSITA WORL: Okay. Thank you.

19 Alex.

20 ALEXANDER BARKER: Thank you for your comments,
21 and for my clarification, your concern is that
22 reburial on set-aside Federal land not be something
23 the tribes are required to do or that they, through
24 the grant process, be encouraged to do or somehow
25 be penalized for not doing. Is there a concern

1 with actually having other tribes do it? Is there
2 a concern with the process itself, or simply that
3 tribes who do not choose to do so aren't set at a
4 disadvantage?

5 SHANE ANTON: No, our tribe, our concerns are
6 selfish, only for our cultural issues. If other
7 tribes want to do it, see a value in it, I don't
8 want to disagree with them. That's fine for them,
9 but whether we do or we don't, we should be treated
10 the same in the sense, you know. We - forgive me
11 if I'm offending anybody, any Federal agencies, but
12 I just don't believe that even ten years out, I
13 don't know if that land is always going to be under
14 Federal protection, that there won't be a land
15 exchange, access. We deal with access, because a
16 lot of what we do deal with the military ranges,
17 specifically Barry Goldwater. They do flights.
18 They have simulations. Access would be a big
19 issue.

20 So there's just a ton of issues that we have
21 that we're wary about doing that, and so we all
22 have reservations. We all have burial sites, you
23 know, undisclosed, but we believe we can better
24 protect them in perpetuity on our own lands.

25 ALEXANDER BARKER: Thank you.

1 ROSITA WORL: I also just wanted to acknowledge
2 that we heard your concern about the repatriation
3 of human remains under CUI because of the
4 associated funerary objects not being able to be
5 repatriated at the same time. So I want to
6 acknowledge we heard that concern, and it's an
7 issue that we'll continue to discuss because I
8 think a lot of other tribes are feeling the same.
9 But it really is important for you because we
10 really learned a lot from you, and it really
11 furtheres our understanding of the issues. And we
12 would encourage you, I know that it is costly to
13 attend these meetings, but I really want to
14 encourage you, if you're not able to come in
15 person, maybe if you would submit, you know, those
16 other concerns because we are interested in hearing
17 those. So thank you very much.

18 SHANE ANTON: Thank you.

19 SHERRY HUTT: The next person, I think will be
20 a short presentation, is Bridget Ambler from
21 History Colorado! – exclamation point.

22 **BRIDGET AMBLER**

23 BRIDGET AMBLER: Good afternoon. This will be
24 brief. I'm honored to be here. Thank you for
25 giving me the chance to talk with you. I'm Bridget

1 Ambler from History Colorado, formerly the Colorado
2 Historical Society in Denver, Colorado.

3 First, I wanted to express my gratitude to the
4 National NAGPRA Grants Program. We're very
5 fortunate in Colorado to have a state that supports
6 NAGPRA efforts in the form of full-time funding for
7 a NAGPRA liaison, expertly filled by our NAGPRA
8 liaison Sheila Goff. We're also fortunate to have
9 an administration that supports NAGPRA
10 implementation, so much so that we've agreed to
11 absorb all indirect costs on NAGPRA grants so that
12 those funds can go completely towards reburial and
13 repatriation travel for tribes and so on.

14 We hope that one day those repatriation grant
15 funds will once again allow for a ceremonial meal
16 that has been universally requested by tribes who
17 have asked us to apply for these grant funds, and
18 it's an important aspect of those reburials that
19 we've participated in and assisted the tribes on.
20 We simply could not conduct the repatriation and
21 reburial processes that we do without these grant
22 monies.

23 Secondly, I wanted to commend the National
24 NAGPRA Program for so quickly processing Notices of
25 Inventory Completion, especially in lieu of the

1 recent promulgations of 43 C.F.R. 10.11. I believe
2 Jaime Lavallee really deserves a lot of credit for
3 streamlining that process, and I recognize Melanie
4 O'Brien for continue those efforts and bettering
5 them.

6 Finally, on behalf of our President Ed
7 Nichols, I want to echo Bradley – Vice-Chairman
8 Bradley Hight's invitation to you all to hold one
9 of your Review Committee meetings in Denver,
10 Colorado. We have a brand-new history center.
11 It's a LEED Gold certified building. It's a
12 beautiful meeting space for you all. Denver has
13 multiple accommodations. Colorado is the
14 indigenous home of at least 48 federally recognized
15 tribes, and the airport is a central hub that makes
16 travel there easy for many. So with that, I hope
17 you will consider this welcome to hold your
18 meetings in Denver in the future, either in the
19 spring or fall of 2013. Thank you very much.

20 ROSITA WORL: Thank you very much for your
21 comments, and again, you know, some of those issues
22 will be referred to our subcommittee, and we thank
23 you for that kind invitation to meet in Denver. We
24 will certainly add that to our list. What we do is
25 we divide the state up into – the country into

1 quadrants and then we try to make sure that we
2 rotate throughout all of the different regions. So
3 we'll add that to the list, that invitation. Thank
4 you. Any comments?

5 Thank you.

6 SHERRY HUTT: Madam Chair, the next presenter
7 would be Frank Wozniak from the USDA Forest
8 Service.

9 **FRANK WOZNIAK**

10 FRANK WOZNIAK: Madam Chair, members of the
11 committee, I thank you for this additional
12 opportunity to address you. My name is Frank
13 Wozniak. I am the NAGPRA Coordinator for the
14 Southwestern Region of the USDA Forest Service, and
15 I'm also the National NAGPRA Coordinator for the
16 USDA Forest Service. What I wanted to take this
17 opportunity for was to provide an additional line
18 of information for the Committee regarding the
19 Coconino National Forest repatriation to the Hopi
20 Tribe, and this has to do with funding.

21 The Coconino National Forest repatriation is a
22 regional priority and a regional commitment for the
23 Southwestern Region of the Forest Service. It is
24 also a national priority and a national commitment
25 for the Forest Service as a whole. The result of

1 this has been significant funding for this
2 repatriation. The total funding for Fiscal 2010,
3 2011 and 2012, which we are now in, the total is
4 960,000 dollars for this repatriation. As you have
5 already been informed, this repatriation will
6 continue for two more years, to 2013 and 2014. The
7 initial proposed funding request for Fiscal 2013
8 and the – I’m sorry, the final proposed funding
9 request for Fiscal 2013, I have to be careful and
10 precise on all of these adjectives, and the initial
11 proposed funding request for Fiscal 2014 amounts to
12 a total of 640,000 more dollars. The total cost
13 for the Coconino repatriation – and this is just
14 with regard to the repatriation, the portion under
15 NAGPRA, the reburial costs are additional and those
16 are covered under the 2008 Farm Bill. The total
17 repatriation costs will be 1.6 million dollars.

18 Based upon the estimates that were given you
19 by the Museum of Northern Arizona and the Arizona
20 State University, there will be somewhat fewer
21 numbers of human remains that will be on the final
22 listing of minimum number of individuals.
23 Initially, it was in the first – in the NAGPRA
24 inventory, Notice of Inventory Completion, it was
25 approximately 2,900 individuals. We estimate now

1 that the final number will be somewhere around
2 2,100 individuals. This is still a very
3 significant number of individuals. It will be the
4 largest repatriation that the Forest Service will
5 do regarding existing collections. In addition to
6 the 2,100 individuals, there will be approximately
7 6,000 funerary objects that will be involved.

8 And just a final number and my final comment,
9 the average cost, therefore, because people are
10 looking at average cost per individual, is 800
11 dollars per individual. That includes not just the
12 examination of the individuals, the determination
13 of the minimum number. It also includes
14 consultation with the Hopi Tribe. It also includes
15 all of the funerary objects, determining what are
16 associated funerary objects, what are unassociated
17 funerary objects, and all of those related
18 expenses. There – I wanted to bring this to your
19 attention to provide some additional context for
20 the work that is being done in the Southwestern
21 Region by the U.S. Forest Service in this single
22 repatriation. I thank you.

23 ROSITA WORL: Thank you very much. Do we have
24 any questions or comments?

25 That is very useful information and I think it

1 might help us in some of the work that we're trying
2 to do. And also I want to commend, again, the USDA
3 for providing these funds to support this effort.
4 Thank you.

5 FRANK WOZNIAK: Thank you, Madam Chair.

6 SHERRY HUTT: The last individual who has
7 requested public comment is Tony Chavarria, Museum
8 of Indian Arts and Culture.

9 **ANTONIO CHAVARRIA**

10 ANTONIO CHAVARRIA: Madam Chair, Committee
11 members, my name is Tony Chavarria. I'm the
12 Curator of Ethnology at the Museum of Indian Arts
13 and Culture – I think it's on. Better? I'm the
14 Curator of Ethnology at the Museum of Indian Arts
15 and Culture, Laboratory of Anthropology here in
16 Santa Fe, and on behalf of the staff of the museum
17 and at the request of our facilitator, I've been
18 asked to invite all of you to a meeting we're
19 having tomorrow at the museum, a regular meeting of
20 our Indian Advisory Panel, which will also have
21 invited delegates from local tribal communities,
22 tribal representatives, and officials to give an
23 informational session on the museum. And also the
24 Indian Advisory Panel, which has been in existence
25 at our museum since 1987, with the opening of the

1 museum, as a method of engaging and using – working
2 with tribal communities and museum programming,
3 exhibitions, education and many other aspects of
4 museums. And at this session, we'll also be
5 providing lunch and exhibit and collections tours
6 for any interested parties. And so we would like
7 to invite each of you and any interested tribal,
8 Federal and museum personnel in attendance.

9 ROSITA WORL: Thank you very much for that kind
10 invitation. Thank you.

11 Madam DFO?

12 SHERRY HUTT: I believe, Madam Chairman, we
13 have come to the end of the agenda. Before we
14 would part, I want to call your attention to what
15 is on the screen, artwork by Alayna Rasile, that
16 the notice has already published for the next
17 NAGPRA Review Committee meeting in Washington, DC,
18 at the National Museum of the American Indian.
19 They are hosting us, which makes this a very
20 wonderful event during Native American Heritage
21 Month. And the day prior the two-day meetings will
22 be a training, also in the museum. So I wanted to
23 bring that to everyone's attention. Thank you.

24 ROSITA WORL: Thank you.

25 **CLOSING COMMENTS**

1 ROSITA WORL: Well, in closing, I want to thank
2 every one of the presenters who came before us. We
3 – it was just very – just invaluable information.
4 We learned a lot from it. You identified many
5 areas that need further attention. You expressed
6 great concerns, but you also shared some of the
7 successes, and we're really also very happy to hear
8 about those successes as well. We appreciate, you
9 know, that you've taken time out of your busy
10 schedule to be here. I know that you have tight
11 budgets, so it really is – you know, we do
12 appreciate that. I also want to invite you, as
13 well as others, to think about coming to the Review
14 Committee. If you are not able to come to the
15 Review Committee, please share your comments
16 through either by letter or even email to our DFO,
17 because we do want to hear from you. So I want to
18 thank you for being here.

19 I want to thank our hosts for that wonderful
20 reception we had the other night. I also want to
21 thank our staff who – I know there's a lot of
22 flurry to getting this meeting organized, and I
23 think the setting and the meeting place, except for
24 the fire alarms, was really great. And also thanks
25 to Lesa, that includes Lesa who is always there

1 vigilant and taking care of the committee and
2 making sure that your words are recorded because
3 they are very valuable in terms of, you know, we go
4 back and we look at them. We study them. We
5 develop minutes from all of those comments, so her
6 work is very valuable.

7 And to my fellow Review Committee, I hope that
8 you were able to see the kind of expertise that
9 each of our individual Review Committee members
10 brings to these deliberations. We come from
11 different fields. We come from different tribes.
12 Each one has a different kind of expertise, and I
13 hope that you were able to see how the Review
14 Committee was able to put that kind of expertise to
15 work on these issues. And I think the Review
16 Committee did an excellent job, and I want to
17 applaud my fellow Review Committee members.

18 And if I may, I'd like to ask Merv to do a
19 traditional closing for us, unless we had any of
20 our Review Committee members that wanted to make
21 any final comments.

22 Merv.

23 **TRADITIONAL CLOSING**

24 MERVIN WRIGHT, JR.: Thank you, Rosita.

25 Since it was done this morning, you know, the

1 song has a place in our prayer, in our thoughts, in
2 our feelings. This song that – you know, I was
3 trying to think of a song to sing and this one just
4 comes to mind. And we use this song to lift our
5 spirits, to give us strength, and to heal where we
6 are hurting. And we use this a lot of times in our
7 ceremonies where we have our loved ones that have
8 passed on. And this is in no way – you know, I
9 know how heavy this issue makes us feel at times,
10 and I know how difficult it is to do this work.
11 And so I offer this song in closing to this Review
12 Committee meeting here in Santa Fe. And I too
13 would like to thank the tribes here from this
14 region, this area, you know, for allowing us to
15 come here and speak about this issue. I thank all
16 of you for being here, to offer your thoughts, your
17 feelings about this issue. I appreciate that.

18 (Native American song.)

19 ROSITA WORL: Thank you and safe travels.

20 **MEETING ADJOURNED**